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## **Developing a Comprehensive Plan**

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### **What is a Comprehensive Plan?**

- Expression of a goals and recommended action to achieve those goals
  - Outline for orderly growth, providing continued guidance for decision-making
  - Document which focuses on immediate and long-range protection, enhancement, growth and development
  - Now also defined in statutes
- Master Plan
  - Land Use Plan
  - Comprehensive Master Plan

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## Frequently Asked Questions

- Must every community adopt a comprehensive plan?
  - No.
- If we adopt a plan, must we adopt zoning?
  - No.
- What if we have zoning but we don't have a written plan?
  - If challenged in court, you would have to prove that your zoning was based on a planning process
- Who adopts the comprehensive plan?
  - The governing board (ex. Town board)

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## Planning provides a legal defense for regulations

Zoning Must be in Accordance with a Comprehensive Plan



Can also provide the basis for other actions affecting the development of the community.

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## Do We Need to Write/Update a Plan?

Ask Yourself These Questions:

- Are you experiencing rapid growth or decline?
- Do you need new roads, sewers, or water service?
- Is current development affecting your community character?
- Are your special places disappearing?



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[illegible]

- Improve chances for grants & loans
  - “Project Readiness”
- Provide a more welcome environment for economic growth

- 7

[illegible]

## Possible Leaders

- Governing Board      Assistance      Training  
 ■ Planning Board      From:      Department  
 ■ Special Board           ■ Consultant  
    ■ Others

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[illegible]

- There are typically many people in your community who can assist in plan preparation at little or no cost to the community.**

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## Using a Consultant

Consultants can provide an unbiased view of the community

- Their role in plan preparation can vary
- Interview the consultants and check their references. Identify the staff person who would be assigned to your community.
- Consider the relevance of their experience
- Identify any subcontractors



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## Identify Community Stakeholders

Identify key people to involve in the process

- Business Leaders
- Environmental Activists
- Civic Leaders
- Elected Officials
- Planning Board and ZBA

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## The Public's Role

### Involving the Public

- Conduct Surveys or Questionnaires
- Hold Informational Sessions
- Ongoing Outreach
- Hold Design Charette
- Seek Out Opinions
- Internet site



### Informing the Public

- Contact Local News Media
- Make Materials Available at Convenient Places
- Be Available to the Public
- Hold Open Meetings

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## Open Meeting Law Requirements

If a board is formally charged with preparing a comprehensive plan, such as a "special board", it must comply with the Open Meetings Law.

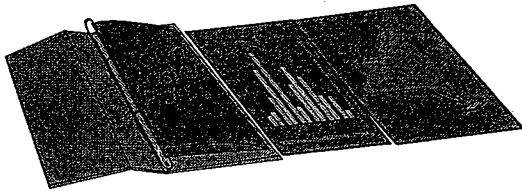
A board that is merely advisory -- the governing board can take action with or without their input -- need not comply with the Open Meetings Law.



- Provide Notice to the Media in Advance
- Post Notice in a Public Location
- Provide Access to the Public

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## Preparing the Plan



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## Steps in the Development of a Comprehensive Plan

- (1) Identifying Major Issues (Focusing)
- (2) Survey & Analysis
- (3) Identifying Goals & Objectives
- (4) Development of Plan
- (5) Implementation & Evaluation

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## Step One: Focusing

**"We're lost, but we're making good time."  
-Yogi Berra**

- Develop *Preliminary Goals* that may lead to a set of goals and objectives, or identify needed research
- Imagine the best for your community



### Determine the Scope of the Plan

- Is the focus on a particular type of development or a particular area of the municipality?
- Will the plan cover a single community or will it be an intermunicipal effort?

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## Step Two: Survey & Analysis

### Inventory Your Assets, Identify Your Liabilities

Conduct basic research, mapping, and analysis of the information to evaluate the community's present circumstances and its future potential

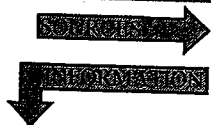


**Issue:**  
**Overburdened Roads**

**Goal:** Reduce # of Accidents at Traffic Intersections  
**Survey & Analysis:** Determine and measure traffic impacts of particular development

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## Physical Characteristics



- Base map
- Natural features
- Transportation system
- Existing land uses
- Suitability for development

- NYS Office of Real Property Services
- NYS DOT and DEC
- Regional Planning Board
- Metropolitan Planning Organization (MPO)
- Utility Company
- E-911 System
- Soil & Water Conservation Service

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## Housing Characteristics

SOURCES →

↓ INFORMATION

- Number and type of units
- Age of housing
- Substandard
- Vacancy rates

- U.S. Census
- Regional Planning Agency
- State Division of Housing and Community Renewal (DHCR)
- Local non-profit housing organizations
- U.S. HUD



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## Demographic Information

SOURCES →

↓ INFORMATION

- Present & future population
- Declining or increasing?
- Change in school-age population
- Change in senior citizen population

- State Data Center
- Regional Data Center
- School District
- Regional Planning Agencies

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## Transportation Issues

SOURCES →

↓ INFORMATION

- Amount and condition of roads, railroad, airport, bikeways, parking
- Demand for public transit
- Accident rates/dangerous road segments
- Proposed development
- Regional transportation plans

- NYS DOT
- MPO
- Local and County Highway Dept.
- Police Agencies
- Traffic studies for projects

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## Economic Trends

SOURCES →

↓ INFORMATION

- Project the effects of economic trends on the community's future
- Regional employment
- Changes occurring in local business industry

- Regional Planning Agencies
- Statistical Digest?
- Local Industrial Development Agencies
- NYS Dept. of Labor
- Temporary Employment Services
- NYS Statistical Yearbook

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## Historic Preservation

SOURCES →

↓ INFORMATION

- Historic areas
- Historic structures



- NYS Office of Parks, Recreation, & Historic Preservation
- Local or County Historical Society
- State or Regional Preservation Groups
- NYS Library

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## Other Sources of Information

- Some Sources of Information:
  - Town or Village Hall
  - County Planning Department
  - Regional Planning Board
  - Regional Organizations
  - County Tax Department
  - Cooperative Extension
  - Department of Transportation



The Municipality May  
Simply Need to Update  
Existing Information



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### Step Three: Establish Goals & Policies

- Analyze Information
- Discover trends
- Examine existing regulations
- Review preliminary goals, adjust based on new information

#### Goal Examples

- Expand the village core
- Increase business diversity
- Increase parking spaces
- Improve entrance to hamlet

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### Develop Policy Recommendations

Policy statements guide future development

Goal: Develop Existing Municipal Parkland  
Policy: Accept money in lieu of parkland when permissible

Goal: Improve traffic safety in commercial areas  
Policy: Work with NYSDOT on access management strategies

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### Consider the Plans of Other Agencies

- County Farmland Protection Plans
- Regional Office of DOT
- School District
- Canal Recreationway Plan
- Coastal Resource Plans
- State Open Space Plan
- County Plan
- Plans of Neighboring Municipalities



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## **Step Four: Develop a Plan**

### **Plans take many forms**

- Short strategic documents
- Comprehensive documents with background information
- Brochure or newspaper insert
- Book
- Web documents

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## **What's in a Plan?**

### **Sample Table of Contents**

- Section 1: Introduction
- Section 2: Existing Conditions
- Section 3: Trends
- Section 4: Environmental Framework
- Section 5: Development Goals & Policies
- Section 6: Land Use Constraints & Opportunities
- Section 7: Land Use Development Plan
- Section 8: Fiscal Impacts
- Section 9: Implementation Strategies
- Section 10: Maps

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## **The Plan Can Also Address:**

- Central Business District/Hamlet
- Center of Municipal Government
- Waterfront
- Airport
- Critical Environmental Areas
- Areas of Historical or Architectural Significance
- Other local issues

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## Reviewing the Proposed Plan

Once the Governing Board receives a proposed plan, it can continue the review process



### The Statutes Say:

If the plan is prepared by another board, it is referred to the Governing Board by resolution

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## Environmental Review

- Subject to State Environmental Quality Review Act (SEQRA)
  - **Adoption** of a Comprehensive Plan is a Type I Action (Presumed to have a potential significant adverse environmental impact)
  - Full EAF is required
  - EIS may be required
- May be designed to serve as a Generic Environmental Impact Statement
  - Include thresholds and conditions that would trigger site specific EISs



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## Agricultural Review

- If there are State Agricultural Districts created pursuant to Agricultural and Markets Law §25-AA, the municipality must consider the effect of adopting the plan on farming
- Municipalities should also consider county agriculture & farmland protection plans.

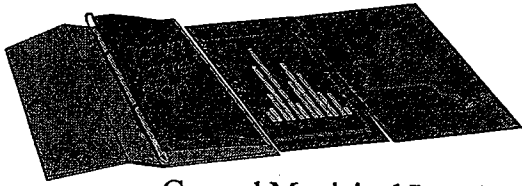


See DOS publication -  
"Local Laws and  
Agricultural Districts: How  
do they Relate?"

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## County Planning Agency Review

The Governing Board must refer the adoption or amendment of a proposed comprehensive plan to the County Planning Board



General Municipal Law §239-m

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## Public Review

The Statutes Say:



■Public hearing during preparation

■Public hearing again by Governing Board

There should be an effort made to reach a community consensus as to what direction the community will take



Consensus is reached when few individuals feel so strongly opposed to the plan that they will *actively* oppose it.

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## Adoption by Resolution



The Governing Board may adopt a comprehensive plan (or an amendment to a comprehensive plan) by resolution



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## Effect of Adopting a Plan Pursuant to the Statutes

All Municipal Land Use Regulations Must Be in Accordance with the Plan

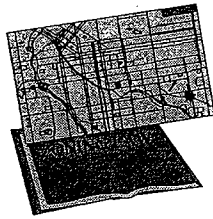
Not *simultaneously*, but as time passes and they are amended by the Governing Board

All Plans for capital projects of other governmental agencies on land included in the municipal comprehensive plan shall consider that municipality's comprehensive plan

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## Step Five: Implementation

Develop a specific course of action which promotes the concepts outlined in the comprehensive plan.



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## Implementation

The Value of Planning comes from the municipality's willingness to implement the plan by:

- Amending Land Use Regulations
- Developing Design Guidelines
- Budgeting for Capital Improvements
- Applying for Appropriate State, Federal and Privately Funded Programs

Private Actions will also play a large role in implementing the plan

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## Review the Plan Periodically

### REVIEW

The Governing Board  
"shall provide, as a  
component of such  
proposed  
comprehensive plan,  
the maximum  
intervals at which the  
adopted plan shall be  
reviewed."

As Policy-Making  
changes and the  
physical  
characteristics of  
the community  
change, the  
comprehensive  
plan should also  
change.

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## Resources

- "A Practical Guide to Comprehensive Planning,"  
NY Planning Federation (2000), (518)432-  
4094, [www.nypf.org/publications.htm](http://www.nypf.org/publications.htm)
- Pace Law School Land Use Law Center  
[www.law.pace.edu/landuse/landuse\\_library.html](http://www.law.pace.edu/landuse/landuse_library.html)
- State of Wisconsin  
[www.doa.state.wi.us/pagesubtext\\_detail.asp?linksu  
bcatid=369](http://www.doa.state.wi.us/pagesubtext_detail.asp?linksu<br/>bcatid=369)
- The Community Planning Website,  
[www.communityplanning.net/index.htm](http://www.communityplanning.net/index.htm)

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## **§ 7-722. Village comprehensive plan.**

1. Legislative findings and intent. The legislature hereby finds and determines that:
  - (a) Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.
  - (b) Among the most important powers and duties granted by the legislature to a village government is the authority and responsibility to undertake village comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.
  - (c) The development and enactment by the village government of a village comprehensive plan which can be readily identified, and is available for the public, is in the best interest of the people of each village.
  - (d) The great diversity of resources and conditions that exist within and among the villages of the state compels the consideration of such diversity in the development of each village comprehensive plan.
  - (e) The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum comprehensive plan.
  - (f) The village comprehensive plan is a means to promote the health, safety and general welfare of the people of the village and to give due consideration to the needs of the people of the region of which the village is a part.
  - (g) The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities that may be directly affected thereby.
  - (h) It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect that status or validity of existing master plans, comprehensive plans, or land use plans.
2. Definitions. As used in this section, the term:
  - (a) "village comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the village.
  - (b) "land use regulation" means an ordinance or local law enacted by the village for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development.
  - (c) "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the village board of trustees to prepare a proposed comprehensive plan and/or an amendment thereto.
3. Content of a village comprehensive plan. The village comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the village:

- (a) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the village are based.
  - (b) Consideration of regional needs and the official plans of other government units and agencies within the region.
  - (c) The existing and proposed location and intensity of land uses.
  - (d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.
  - (e) Consideration of population, demographic and socio-economic trends and future projections.
  - (f) The location and types of transportation facilities.
  - (g) Existing and proposed general location of public and private utilities and infrastructure.
  - (h) Existing housing resources and future housing needs, including affordable housing.
  - (i) The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.
  - (j) Existing and proposed recreation facilities and parkland.
  - (k) The present and potential future general location of commercial and industrial facilities.
  - (l) Specific policies and strategies for improving the local economy in coordination with other plan topics.
  - (m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.
  - (n) All or part of the plan of another public agency.
  - (o) Any and all other items which are consistent with the orderly growth and development of the village.
4. Preparation. The village board of trustees, or by resolution of such village board of trustees, the planning board or a special board, may prepare a proposed village comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the village board of trustees.
5. Referrals.
- (a) Any proposed comprehensive plan or amendment thereto that is prepared by the village board of trustees or a special board may be referred to the village planning board for review and recommendation before action by the village board of trustees.



- (b) The village board of trustees shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the village planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

6. Public hearings; notice.

- (a) In the event the village board of trustees prepares a proposed village comprehensive plan or amendment thereto, the village board of trustees shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the village board of trustees shall hold one or more public hearings prior to adoption of such proposed plan or amendment.
- (b) In the event the village board of trustees has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The village board of trustees shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.
- (c) Notice of a public hearing shall be published in a newspaper of general circulation in the village at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the village clerk and may be made available at any other place, including a public library.

7. Adoption. The village board of trustees may adopt by resolution a village comprehensive plan or any amendment thereto.

8. Environmental review. A village comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A village comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

9. Agricultural review and coordination. A village comprehensive plan and any amendments thereto, for a village containing all or part of an agricultural district or lands receiving agricultural assessment within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended village comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

10. Periodic review. The village board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

11. Effect of adoption of the village comprehensive plan.
  - (a) All village land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.
  - (b) All plans for capital projects of another governmental agency on land included in the village comprehensive plan adopted pursuant to this section shall take such plan into consideration.
12. Filing of village comprehensive plan. The adopted village comprehensive plan and any amendments thereto shall be filed in the office of the village clerk and a copy thereof shall be filed in the office of the county planning agency.

**Legal Memorandum LU09**  
**DEFINING A COMMUNITY THROUGH THE COMPREHENSIVE PLAN**

While those in planning and government circles may not agree on a single definition for the concept of "smart growth," which some have suggested is nothing more than a new name for old ideas, there is a strong sense among all commentators that traditional governmental spending actions, planning efforts and regulatory measures may not lead to communities which are well equipped to address current limitations on financial and natural resources. There is a sense that something is awry, has gone amiss, and nowhere is this sense stronger than when one considers now-aging suburban sprawl. May existing land use laws be used (or used in a new way) to enable communities to fashion a definition of themselves, both as they now exist and as they wish to exist in the future? In New York, yes.

***New York and the Comprehensive Plan***

The zoning enabling statutes in New York, which provide towns, cities and villages with authority to adopt zoning laws, require that zoning be enacted in accordance with a "comprehensive" or "well considered" plan. Zoning adopted in accordance with a comprehensive plan has traditionally been upheld by the courts in New York, even where that plan has not been found in a single document labeled "The Comprehensive Plan." Instead, in the absence of a statutory definition of "comprehensive plan," the courts have looked to whether the zoning law in question is "consonant with a total planning strategy, reflecting consideration of the needs of the community." (*Udell v. Haas*, 21 NY2d 463). In other words, a local government must show that the

"...zoning changes must indeed be consonant with a total planning strategy, reflecting consideration of the needs of the community....What is mandated is that there be comprehensiveness of planning, rather than special interest, irrational *ad hocery*. The obligation is support of comprehensiveness of planning, not slavish servitude to any particular comprehensive plan." (*Town of Bedford v. Village of Mount Kisco*, 33 NY2d 178, 188).

Evidence that authorities have acted in the public interest and have undertaken suitable planning or forethought can be found in planning documents, minutes of legislative meetings and the text or findings section of the zoning law itself. (*Asian Americans for Equality v. Koch*, 72 NY2d 121).

In order to provide greater guidance to local governments which may wish undertake a comprehensive planning process and to adopt a blueprint, comprehensive planning document for their communities, the zoning enabling statutes were amended in 1993 to define "comprehensive plan" and to explain how one may be formulated. (Chapter 209 of the Laws of 1993, adding Town Law, §272-a; Village Law, §7-722; and General City Law, §28-a). If a comprehensive plan is adopted under these statutory provisions, the plan will not only provide the rational basis for regulatory measures such as the local zoning law, but will guide other future decisions, such as capital expenditures. (Town Law, §272-a(11); Village Law, §7-722(11); General City Law, §28-a(12)).

A local government need not adopt a comprehensive plan under the new statutory provisions. The traditional, court-rendered rules regarding comprehensive planning continue to apply in those communities which do not. But for those communities which wish to imprint both their built and natural environments with community-devised, long-ranged goals, the comprehensive plan is the ideal vehicle for doing so.

## ***Defining a Community***

One of the benefits of formulating a comprehensive plan as described by the new statutes, is that it provides an opportunity for local leaders and residents to "define" their community, both as it exists now and with a vision for the future. The definition of "village comprehensive plan," for example, identifies a document with both an immediate and a long-range view:

"...‘village comprehensive plan’ means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the *immediate and long-range protection, enhancement, growth and development of the village*. (Village Law, §7-722(2)(a)) emphasis added. Note that similar definitions may be found for towns (Town Law, §272-a(2)(a) and cities (General City Law, §(3)(a)).

The plan provides the venue for identifying *what* the community will look like (goals, objectives, principles), *how* the community intends to get there (standards, devices and instruments) and the *purposes* for doing so (protection, enhancement, growth and development). The plan may include a wide range of topics "at the level of detail adopted to the special requirements of the village." Hence the plan may be composed simply of a set of vision statements or may combine policy goals with very detailed data (e.g. environmental inventories, demographic trends, housing resources, transportation facilities). ( See Village Law, §7-722(3); Town Law, §272-a(3); General City Law, §28-a(4) for the lengthy list of potential plan topics).

Fashioning a definition requires community input if that definition is to most accurately reflect a community's sentiments. Proposed comprehensive plans are subject to at least one public hearing during preparation and at least one prior to adoption, however this does not preclude additional hearings or meetings as necessary to assure full opportunity for citizen participation in preparation of the plan. The local legislative body itself, the planning board or a specially created board may be charged by the local legislative body with preparing a comprehensive plan for consideration by the local legislative body. A wide range of opportunities for collecting information regarding the existing land uses, environmental features, historical resources and the like is available to the local government engaged in developing a comprehensive plan. (See Village Law, §7-722(4); Town Law, §272-a(4); General City Law, §28-a(5)).

Once a comprehensive plan is adopted by the local legislative body, all of the local government's land use regulations must be in accordance with it and all plans for capital projects of another governmental agency on land included in the plan must take the plan into consideration. (See Village Law, §7-722(11); Town Law, §272-a(11) ; General City Law, §28-a(12)).

## ***New Use for an Old Tool?***

The term "comprehensive plan" has been in use in relation to land use laws since the earliest days of zoning in New York. Despite this, and despite the fact that cities, towns and villages were empowered to adopt "master plans" for development in their jurisdictions, plans, variously named, have not typically been used by local governments as a means to discuss, formulate and implement community visions. Perhaps this is because the process can be lengthy and contentious or perhaps the historical relationship of the "comprehensive plan" to zoning impliedly circumscribed the consideration of comprehensive planning to that limited field. Indeed, zoning - including transfers of development rights, subdivision clustering, planned unit developments and floating zones - provides many of the regulatory tools which can be utilized by local governments to achieve their community's visions. Just as importantly, though, governmental decisions to

fund infrastructure, for instance, must be cognizant of a community's long term vision.

The comprehensive plan statutes permit a community to look well beyond its zoning law and to identify what a community could be tomorrow and fifty years later. It affords a blueprint for achieving these ends and allows the integration of many disciplines - transportation, human services, recreation, environment, economic development - into a single, cohesive plan. To "change the paradigm" for the comprehensive plan it must be viewed as a tool which can provide the venue and the process for identifying how people in a community want to live, what is important to their lives and what natural and built environments bring the "sense of place" people crave.

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# **Creating the Community You Want: Municipal Options for Land Use Control**

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**JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES**

**NEW YORK STATE  
George E. Pataki  
Governor**

**DEPARTMENT OF STATE  
Randy A Daniels  
Secretary of State**

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## INTRODUCTION

This publication summarizes the various land use management tools which New York State municipalities can use to help deal with issues of community character and change. It is a primer that briefly describes both the importance of planning to identify how a municipality wishes to develop, as well as the regulatory techniques available to help it realize its goals. It begins with a discussion of the comprehensive plan, continues with a survey of various zoning tools which can be used to regulate land use and development, and concludes with an explanation of other methods which can be used to manage a municipality's land resources and the built environment.

The growth management tools and techniques available to meet a community's goals can be grouped into five basic categories: (1) regulation of how land is developed and used through local laws and ordinances; (2) public spending and taxing policies; (3) land acquisition; (4) private voluntary preservation and development techniques; and (5) the location and capacity of infrastructure. This booklet will focus on the first category: local regulation of land use.

In communities throughout New York State and the country, citizens, developers, and local governments have realized the importance and necessity of working together to foster creative development that protects valuable land, social, economic, and environmental resources.

Each community has its own development goals and concerns, so the specific land use management device that works for one municipality may not be the best for another. It is suggested, therefore, that communities carefully pick and choose among the available measures.



## COMPREHENSIVE PLAN

This section will look at how a municipality can use comprehensive planning to support its objectives and create a vision for the future.

### *How do we begin?*

Most successful planning efforts begin with a survey of existing conditions and a determination of the municipality's vision for the future. This process, usually referred to as comprehensive planning, should not be confused with zoning or other land use regulatory tools. Instead, the comprehensive plan should be thought of as a blueprint on which zoning and other land use regulations are based.

The State statutes define a comprehensive plan as “the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development” of the municipality.

To begin the process of developing a comprehensive plan, the legislative body of the city, town or village must determine whether it will prepare a comprehensive plan itself, or delegate the responsibility to its planning board, or perhaps to a “special board” created for the purpose. The board that prepares the plan may then decide to work with a consultant or planning staff in preparing a draft plan.

### COMPREHENSIVE PLAN

General City Law §28-a  
Town Law §272-a  
Village Law §7-722

The Legislature has enacted statutes to guide boards through the comprehensive

plan process. A municipality has the option to

adopt a comprehensive plan under these statutes, or to proceed through a planning process which has evolved based on case law.

An important component of the process is public participation. This occurs both formally, through mandatory hearings held by the preparing board and by the legislative body prior to adoption of the plan, and through the informal participation of the public at workshops and informational sessions.

### TYPICAL COMPREHENSIVE PLAN ELEMENTS

- General statements of goals, objectives, principles and policies
- Consideration of regional needs and the official plans of other government units
- Existing and proposed location and intensity of land uses
- Existing and proposed educational, historical, cultural, agricultural, recreational, coastal and natural resources
- Demographic and socio-economic trends and projections
- Existing or proposed location of transportation facilities, public and private utilities and infrastructure
- Housing resources and future housing needs, including affordable housing
- Measures, programs, devices, and instruments intended to implement the goals and objectives of the various topics within the comprehensive plan

### *What does a comprehensive plan look like?*

While comprehensive plans may take many forms, there are common elements to all good plans. First of all, the plan should be comprehensive. This means that your municipality's plans must reflect a total planning strategy that recognizes the needs of the entire municipality. In contrast, development policies that serve special interests, or *ad hoc* actions that single out small parcels without a good reason, will usually fail legal challenges.

### ***Is professional help available?***

Communities which do not have professional planners on staff have several resources available to them. First, they may be able to receive assistance from their county or regional planning agency. Second, they may be able to contract with a professional planning or engineering firm which provides planning services. Third, municipal residents may possess expertise in planning or other environmental or design disciplines.

When contracting for professional planning services, it is helpful to develop a request for proposals (RFP) that you can circulate to planning professionals. In the RFP it is important to describe your municipality's needs and the purpose of your planning efforts, but it is not necessary to provide a great deal of detail. You should make clear exactly what you expect the planners to provide (do you need graphics, or special economic studies?). Make sure you ask about the planner's experience, and ask for examples of his or her work. Finally, provide a time line for completion of the work.

### ***How long or detailed does my municipality's comprehensive plan need to be?***

Since each municipality that has the power to regulate land use has a different set of constraints and options, the final form of each comprehensive plan will be unique. The size and format of the comprehensive plan will vary from municipality to municipality, and from consultant to consultant. It may consist of a few pages, or it may be a thick volume of information.

However long or detailed the plan is, its real value is in how it is used and implemented. The following sections present ways in which community objectives expressed in the plan can be achieved.

## **ZONING & RELATED TOOLS**

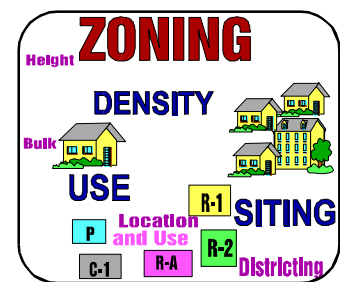
### **ZONING**

Zoning regulates the use of land, the density of land use, and the siting of development. Zoning is a land use technique that can be used to help implement a municipality's comprehensive plan.

#### ***How common is zoning?***

Zoning is the most commonly and extensively used local technique for regulating use of land as a means of accomplishing municipal goals.

According to a 1994 survey by the Legislative Commission on Rural Resources, 100% of cities, 67% of towns and 87% of villages in New York had adopted zoning laws or ordinances.



Zoning regulations should be carefully constructed to make sure they will help carry out municipal planning goals. Some communities don't pay enough attention to the translation of those goals into the drafting of their zoning regulations. The result is often frustration with zoning as a technique, when in reality the problem is that the zoning regulations have not been carefully enough constructed. This will, of course, frustrate the achievement of municipal planning goals.

#### ***What does a zoning law or ordinance look like?***

Zoning commonly consists of two components: a zoning map and a set of zoning regulations.

The zoning map divides a municipality into various land use districts, such as residential, commercial, and industrial or manufacturing. The land use

districts that a municipality establishes can be even more specific, such as high density residential, medium density, low density, general commercial, highway commercial, light industrial, heavy industrial, or other. Mixed-use districts may also be appropriate, depending upon local planning and development goals as set forth in a comprehensive plan.

The zoning regulations describe the permissible land uses in each of the various zoning districts identified on the zoning map. They also include dimensional standards for each district, such as the height of buildings, minimum distances (setbacks) from buildings to property lines, and the density of development. These are referred to as “area” standards, as opposed to “use” standards.

Zoning regulations will also set forth the steps necessary for approval by the type of use, the zoning district involved, or by both. For example, a single-family home is often permitted “as-of-right” in a low-density residential zoning district. “As-of-right” uses, if they meet the dimensional standards, require no further zoning approvals, and need only a building permit in order for construction to begin.

### ***How does zoning address projects that will not meet the standards?***

By law, zoning regulations provide for relief from the strict application of regulations that may affect the economic viability of a particular parcel, or may obstruct reasonable dimensional expansion. Such relief is in the form of a variance.

A variance from the zoning regulations is the granting of permission by an administrative, quasi-judicial body (i.e., the Zoning Board of Appeals) to use land in a manner which is not in accordance with or is prohibited by the zoning regulations.

There are two types of variances: (1) a use variance; and (2) an area variance.

A *use variance* allows property to be used for an activity which is prohibited in a zoning district. For

example, if a parcel of land is zoned for residential purposes and the owner wants to establish a commercial use, the owner would need to apply for a use variance.

An *area variance* allows relief from some dimensional requirement of the zoning regulations, although the use to be made of the property is allowed. Typically due to setback or other dimensional requirements, a proposed structure on the property cannot be built in conformity with zoning standards. For example, if a property is zoned for residential purposes, but a natural feature, such as a rock formation, or a ravine, prevents the placement of the dwelling so that it complies with the setback requirements, an area variance may be appropriate. If the owner of a single family dwelling wishes to build an addition, which would violate a side-yard restriction, an area variance may also be necessary.

By their very nature, the issuance of variances allows land to be used in a manner prohibited by zoning regulations. If frequently and imprudently granted, variances (especially use variances) have the potential to undermine a municipality's land use and zoning plan over time, and ultimately, a municipality's ability to achieve its growth and development goals. On the other hand, the frequent need to issue variances that have met the statutory tests may well be an indication that the municipal zoning ordinance needs to be revised.

### ***Are there different standards for use and area variances?***

Yes. These standards are set forth in the Town, Village and General City Laws. Additional

**VARIANCE STANDARDS**  
General City Law §81-b  
Town Law §267-b  
Village Law §7-71

information about how zoning boards of appeals apply these standards can be found in the Department of State

publication, Zoning Board of Appeals.

***What is a “zoning board of appeals” and what powers does it have?***

Zoning Boards of Appeals (ZBA) are a basic part of zoning administration. They are required as "safety valves" in order to provide relief, in appropriate circumstances, from overly restrictive zoning provisions. In this capacity, they function as appellate entities, with their powers derived directly from State law.

The State zoning enabling statutes prescribe that zoning boards of appeals must be created when a municipality enacts zoning. ZBA members are appointed by the municipality's legislative body. ZBAs function free of any oversight by the municipal legislative body. The legislative body may not review the grant or denial of variances, special use permits, or any other decisions made by the ZBA. However, the statutes do provide for review of zoning boards of appeals decisions by the courts in an Article 78 proceeding.

**ZONING BOARD OF  
APPEALS**

General City Law §81  
Town Law §267  
Village Law §7-712

In addition to the appellate role, some ZBAs are given authority by the municipal legislative body over other specified matters.

This usually involves the issuance of special use permits.

One of the basic appellate powers of ZBA is the authority to issue variances. A variance request may be heard by the ZBA either as an appeal of a decision by the municipal zoning officer, or where it becomes apparent that an application for subdivision, site plan or special use permit approval does not comply with a dimensional requirement of the zoning law.

Specifically, the State statutes provide:

"Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals

from and reviewing an order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article . . . Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau" of the municipality.

***What is the difference between an appeal for a variance and an appeal for an “interpretation?”***

The State statutes specifically give a ZBA the power to hear appeals seeking interpretations of provisions of the zoning regulations. An appeal seeking an interpretation is an appeal claiming that the decision of the administrative official was incorrect. It is a claim that he or she misinterpreted the zoning map or regulations, or wrongly issued or denied a permit. By contrast, in an appeal for a variance there is no dispute whether the enforcement officer applied the zoning correctly. Instead, the applicant feels there should be an exception made in his or her case, and that some of the zoning rules should not apply. A ZBA must then apply the criteria set forth in the State statutes, in its determination whether to grant the variance requested.

***How are land uses that existed prior to adoption of zoning dealt with?***

With the initial adoption of zoning regulations some pre-existing uses of land or buildings may not comply for one reason or another with the zoning regulations. In order to alleviate the problems and hardships that may be caused if lawfully pre-existing uses were forced to discontinue upon adoption of zoning regulations, the concept of "grand fathering" certain uses was created. Those uses are referred to as legal "non-conforming uses."

Types of non-conformance include: (1) non-conforming use of land or buildings; (2) non-conforming building; and (3) non-conforming subdivision of land or lot of record.

While non-conforming uses may generally continue to exist, municipalities may regulate them. The types of regulation employed most frequently deal with limitations on the change, enlargement or alteration, or concern the destruction or abandonment of non-conforming uses. A municipality may require a non-conforming use of land or buildings to be discontinued if the use is abandoned, and may impose restrictions on the expansion of such uses.

***Can some uses be allowed only if certain conditions are met?***

In addition to “as-of-right” uses, a zoning law or ordinance will typically identify other uses which, while permissible in a given zoning district, require more involved review. Gas stations, office buildings, and home businesses are examples of such uses. Often such uses are reviewed by the Planning Board under “special use permit” guidelines.

***Zoning occasionally appears rigid. Is there any way it can be made more flexible?***

Yes. Traditional zoning typically consists of regulations controlling development by dividing a municipality into separate districts (separating uses) and then establishing lot, area, setback, height, lot coverage, and other similar types of development standards. While this type of zoning is effective in protecting established areas such as residential neighborhoods, it may lack the element of flexibility necessary for a particular municipality to fully realize its planning goals and vision for the future.

In some communities, the basic use and density separation provided by traditional zoning is all that is necessary to achieve municipal development goals and objectives. However, many communities desire development patterns which traditional zoning only partially achieves. For example, a particular municipality may wish to strongly encourage a particular type of development in a certain area, or may wish to limit new development to infrastructure capacity.

Use of one or more special zoning techniques can serve to encourage and “market” the type of development and growth a municipality desires, more closely linking a municipality’s comprehensive plan with the means to achieve it.

Among the zoning techniques available are special use permits, incentive zoning, overlay zoning, performance zoning, floating zones, planned unit developments, cluster development, and transfer of development rights.

**ZONING TECHNIQUES**

Special Use Permits  
Incentive Zoning  
Overlay Zoning  
Performance Zoning  
Floating Zones  
Planned Unit Developments  
Transfer of Development Rights

**SPECIAL USE PERMITS**

Special use permits (sometimes referred to as conditional uses, special permits or special exceptions) are a common technique for allowing a municipality to review a proposed development project in order to assure that the project is in harmony with the zoning and will not adversely affect the neighborhood. In most municipal zoning regulations, many uses are permitted within a zoning district “as-of-right,” with no discretionary review of the proposed project. Certain uses, on the other hand, require closer examination.

***Who grants a special use permit?***

If special circumstances are met, a use may be allowed through a special use permit, in which case the municipality’s planning board or zoning board of appeals, or in a few cases, the legislative body, reviews the individual project.

The special use permit is granted by the board if the proposal meets the special use permit standards

found in the zoning regulations. Typically, the standards are designed to avoid possible negative impacts of the proposed project with adjoining land uses or with other municipal development concerns or objectives, such as traffic impacts, noise, lighting, or landscaping.

#### **SPECIAL USE PERMIT**

General City Law §27-b  
Town Law §274-b  
Village Law §7-725-b

The special use permit standards established by a municipality should depend upon its planning objectives. For

example, if a municipality is concerned about protecting visual access to an important lake, but also wishes to encourage and accommodate specific commercial development adjacent to the water body, it could provide for such uses by special use permit. Among the standards to be met by the applicant might be "protection of visual access to the lake" from public roads. For example, commercial buildings could be situated so as to preserve the view. The extent to which a proposed project complies with a general standard would have to be determined by the board reviewing the special use permit. Communities may also make such special use permit standards more specific.

#### ***Is there a procedure which must be followed before a special use permit may be granted or denied?***

Yes. The State enabling statutes contain the procedure which must be followed when a board receives an application for a special use permit. A public hearing must be held, and must be properly noticed in the newspaper. In some instances, applications may need to be referred to the county or regional planning agency for review and recommendation.

#### **INCENTIVE ZONING (BONUS ZONING)**

The authority to incorporate incentive zoning into a municipality's zoning regulations in New York

State is set forth in the State planning and zoning enabling statutes. The zoning enabling statutes set out a specific procedure to be followed when the local legislative body decides to adopt incentive zoning.

Incentive zoning is an innovative and flexible technique. Conceptually, it allows developers to

exceed the dimensional, density, or other limitations of zoning regulations in return for providing certain benefits or amenities to the municipality. Incentive zoning can be very effective in encouraging desired types of development in targeted locations.

A classic example of incentive zoning would be an authorization to a developer to exceed height limits by a specified amount, in exchange for the provision of public open space, such as a plaza.

#### ***What value does incentive zoning have for a municipality?***

By themselves, zoning regulations do not insure that development will occur. It can be said that zoning, by its nature, acts prospectively by indicating what uses will be allowed in the future. If a municipality wants a certain type of development in particular locations, it can usually only wait to see if a developer will find it economical to build. Incentive zoning changes this dynamic by providing economic incentives for development that may, without the incentive, not occur.

Incentive zoning is also a method for a municipality to obtain needed public benefits or amenities in certain zoning districts through the development process. Local incentive zoning laws can even be structured to require cash contributions from developers in lieu of physical amenities. For example, the square footage of a proposed store in the central business district may be increased if adequate funds are contributed towards the

#### **INCENTIVE ZONING**

General City Law §81-d  
Town Law § 261-b  
Village Law § 7-703

construction of a municipal parking garage.

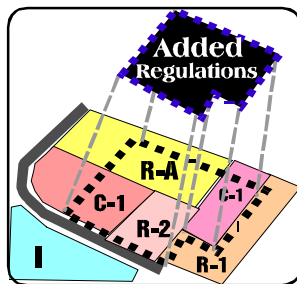
Incentive zoning can provide an array of public benefits to a municipality. For instance, communities can use incentive zoning to provide various public amenities such as affordable housing, public access to a water body's edge, public park improvements, and a host of other public benefits specified in the municipality's incentive zoning provisions.

Whatever system of incentive zoning a municipality adopts, it must be in accordance with the local comprehensive plan. Incentive zoning can be an effective means of implementing many of the goals of a comprehensive plan.

## **OVERLAY ZONING**

The overlay zoning technique is a modification of the system of conventionally mapped zoning districts. An overlay zone applies a common set of standards to a designated area that may cut across several different conventional or "underlying" zoning districts. The standards of the overlay zone apply in addition to those of the underlying zoning district. Some common examples of overlay zones are the flood zones administered by many communities under the National Flood Insurance Program, historic district overlay zones, areas of very severe slopes, a waterfront zone, or an environmentally sensitive area.

For example, flood plain overlay zone regulations would address such matters as flood-proofing of development, elevation of structures, or anchoring of mobile homes. These "overlay" requirements do not replace the underlying zoning district regulations, but are in addition to them.



There are no specific procedures in the State zoning enabling statutes dealing with overlay

zoning. Overlay requirements may be enacted or amended in the same manner as other zoning regulations.

## **PERFORMANCE ZONING**

Some communities have enacted zoning regulations that establish performance standards, rather than strict numerical limits on building size or location, as is the case with conventional zoning. Performance zoning, as it is commonly called, regulates development based on the permissible effects or impacts of a proposed use, rather than by the traditional zoning parameters of use, area and density. Under performance standard zoning, proposed uses whose impacts would exceed specified standards are prohibited unless the impacts can be mitigated.

Performance zoning is often used to address municipal issues concerning noise, dust, vibration, lighting, and other impacts of industrial uses. It is also used by communities to regulate environmental impacts, such as storm-water runoff, scenic and visual quality impacts, and defined impacts on municipal character. The complexity and sophistication of these performance standards vary widely from one municipality to another, depending on the objectives of the program and the capacity of the locality to administer it. In some communities throughout the country, performance zoning has actually replaced traditional zoning districts and the dimensional standards of traditional zoning.

At times, performance zoning is used in combination with a point system. Under such a scheme, a proposed project must amass a minimum number of points in order to receive a permit. In contrast to the self-executing nature of traditional zoning, where a landowner can determine if a project is permissible by reading the zoning map and zoning text, point systems require case-by-case review to determine if a specific land use is permissible.

## **THE FLOATING ZONE**

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Floating zones allow a municipality flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which is desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts, as floating zones must be approved by the local legislative body.

The standards and allowable uses for a floating zone are set forth in the text of the municipality's zoning regulations, but the actual district is not mapped; rather, the district "floats" in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time the municipality maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. The floating zone technique may be used by communities that wish to provide for a future industrial park, for example.

Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes an amendment to the municipal zoning regulations which requires the approval of the local legislative body.

### **PLANNED UNIT DEVELOPMENTS (PUDs)**

Planned unit developments, or PUDs as they are commonly called, describe a zoning technique allowing development of a tract of land (usually a large tract of land, but not always) in a comprehensive, unified manner and in which the development is planned to be built as a "unit." As a mapping designation, they are also known as planned development districts (PDD), and are often a form of floating zone in that they are not made a part of the zoning map until a PUD project is approved. PUDs that are shown on a zoning map may require approval by special use permit.

The PUD concept allows a combination of land uses, such as single and multiple residential, industrial, and commercial, on a single parcel of

land. It also may allow a planned mix of building types and densities. For example, a single project might contain dwellings of several types, shopping facilities, office space, open areas, and recreation areas.

There is no specific enabling legislation in New York State for creating PUD districts. In creating one, a municipal legislative body would need to follow the procedure for amending zoning to create a new zoning district or to establish special use permit provisions. An application for a PUD district is typically reviewed by the planning board, and a recommendation is made to the legislative body, which may then choose to rezone the parcel(s).

### **TRANSFER OF DEVELOPMENT RIGHTS (TDR)**

Transfer of development rights (TDR) is an innovative and complex growth management technique. It is based on the concept that ownership of land gives the owner a "bundle of rights," each of which may be separated from the rest. For example, one of the "bundle of rights" is the right to develop land. With a TDR system, landowners are able to retain their land, but sell the development rights for use on other properties. TDR has been most often applied for preservation of farmland in New York. Under common TDR systems, a farmer is able to keep the land in agriculture by selling the property's development rights, which are then used on non-agricultural land.

#### ***Where can development be transferred to?***

**TRANSFER OF  
DEVELOPMENT RIGHTS**  
General City Law §20-f  
Town Law §261-a  
Village Law §7-701

Under the State zoning enabling statutes, areas of the municipality which have been identified through the planning process as in need of preservation (e.g., agricultural land) or in which



development should be avoided (e.g., municipal drinking water supply protection areas) are established as “sending districts.” Owners of land in these designated areas may sell the rights to develop their lands, and those development rights may be transferred to lands located in “receiving districts.”

Those rights usually take the form of a number of units per acre, or gross square footage of floor space, or an increase in height. The rights are used to increase the density of development in the receiving district.

Receiving districts are those areas which the municipality has determined are appropriate for increased density based upon a study of the effects of increased density in such areas. For example, a town may determine that it is appropriate to preserve prime agricultural land, which it designates as a sending district, and that its unincorporated hamlet area may be developed at a higher density and designated as a district where development rights can be used to increase density above what is allowed by right.

In this manner, owners of land in sending districts are able to realize a level of economic return while the municipal goal of preserving the land is achieved. The TDR system will be successful, however, only where there is a demand to increase development in the receiving districts and where the municipality does not undermine the incentive to purchase development rights by rezoning receiving districts to higher densities which will alone meet market demand.

***How can municipalities be sure that sending districts are not developed in the future?***

The State zoning enabling statutes require that land from which development rights are transferred are subject to a conservation easement limiting the future development of the property. The statutes also require that the assessed valuation of properties be adjusted to reflect the change in development potential for real property tax purposes.

TDR is a sophisticated land use management tool that requires a high degree of municipal staff experience and resources to initiate and maintain. It should be considered in that light, and only after a municipality has undertaken a thorough study of its implications.

## **SITE PLAN REVIEW**

Site plan review is concerned with how a particular parcel is developed. A site plan shows the arrangement, layout and design of the proposed use of a single parcel of land. Site plan review can include both small and large-scale proposals, ranging from gas stations, drive-through facilities and office buildings, to complex ones such as shopping centers, apartment complexes, and industrial parks.

### **SITE PLAN REVIEW**

General City Law §27-a  
Town Law §274-a  
Village Law §7-725-a

The authority to require site plan review is derived from the State enabling statutes.

A local site plan review requirement may be incorporated into the zoning law or ordinance, or may be passed as a separate local law or ordinance. The local legislative body has the power to delegate site plan review to the planning board, zoning board of appeals, or another board.

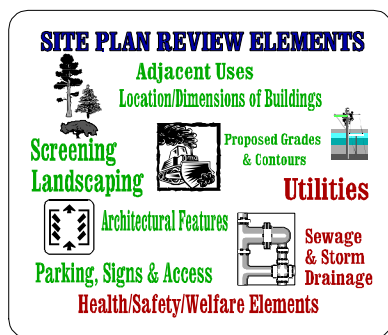
### ***What uses are subject to site plan review?***

The local site plan review regulations or local zoning regulations determine what uses require site plan approval. Uses subject to review may be (1) identified by the zoning district in which they are proposed; (2) identified by use, regardless of the zoning district or proposed location within the community; or (3) located in areas identified as needing specialized design restrictions by way of an overlay zone approach, such as a flood zone or historic preservation district.

Site plan review can be a valuable tool for commercial, industrial, multi-family projects or uses which occur in environmentally sensitive areas. The development of single family housing is usually not required to undergo site plan review.

### ***What issues can site plan review address?***

Site plan review can address a wide range of issues including how traffic will flow within the site and how it will merge into existing transportation corridors. It can define where structures will be placed, where signage and parking will go, what landscaping and buffering will be required, where drainage facilities may be needed, and any range of development concerns which the municipality determines to be appropriate. The site plan may be reviewed according to the elements specified in the local site plan law or ordinance.



Site plan issues should be addressed through a set of general or specific requirements included in the local site plan review regulations.

The review board may be empowered by the local legislative body to waive certain requirements if they are not appropriate for a particular application, subject to conditions set forth in the local regulations. The review board cannot, however, waive *strict* requirements established by zoning for which not waiver is provided for in the regulations. In the event an applicant's proposal includes a need for an area variance from the strict dimensional requirements of zoning, the applicant may apply directly to the zoning board of appeals without waiting for a denial from the zoning enforcement officer.

### ***How does site plan review work?***

Although the State enabling statutes provide for a one stage process, many municipalities have

adopted a multistage process which includes a sketch plan review phase and final plan review. In the sketch plan phase, the review board may indicate to the applicant whether the proposal's major features are generally acceptable for review, or if the proposal warrants modification before more expenses are incurred for detailed plans.

The site plan regulations will specify whether the board reviewing the site plan is required to hold a hearing on the application. State law does not require that a hearing be held, but if one is held, it must be convened within 62 days of the board's receipt of the application.

The board reviews the layout and design of the proposed use based on the elements set forth in the State enabling statutes, as well as any other additional elements specified in the local law or ordinance. As in other land use approvals, the board must comply with the State Environmental Quality Review Act and may need to refer the site plan to the county planning agency for its review and recommendation.

### ***How can municipalities be sure that required improvements are made?***

State enabling statutes allow a municipality to require the applicant to post a performance guarantee that the needed infrastructure and improvements will be completed as approved. Even on a relatively small site, this could be a useful technique to insure that a business completed in the fall and allowed to open will complete required landscaping in the spring.

### ***Are there any special provisions relating to residential development?***

Site plan review is often applied to apartment, townhouse, and condominium developments. Because the future residents are often expected to contribute to the municipal need for recreational land or facilities, municipalities may require the developer to provide recreation land on the proposed site, or to contribute to a fund for the purchase or improvement of recreational land. The

State enabling statutes provide for the set aside of land (or payment in lieu of land) for residential site plans, just as the statutes provide for the set aside of land during the subdivision review process.

In order to avail itself of this provision, a municipality must make findings evaluating its needs for park and recreational facilities, based on projected population growth to which the particular project will contribute. By having a comprehensive plan which addresses such issues, a municipality can avoid ad hoc decisions regarding whether a residential site plan will contribute to the need for park or recreational facilities.

## SUBDIVISION REVIEW

One of the most common forms of land use activity is the subdivision of land. The subdivision process controls the manner by which land is divided into smaller tracts of land. Subdivision regulations should ensure that when development does occur, streets, lots, open space and infrastructure are adequately designed and the municipality's land use objectives are met.

### *What is a subdivision?*

"Subdivision" is defined in the State enabling statutes as:

... the division of any parcel of land into a number of lots, blocks or sites as specified in a local ordinance, law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development.

The phrase "as specified in a local ordinance, law, rule or regulation" means that each municipality is permitted to further define "subdivision" for its own purposes, in connection with its subdivision review procedure.

### *Must a subdivision involve the sale of land?*

While a subdivision is typically thought of as the division of land into separate parcels which are sold to individual buyers (ownership in "fee"), subdivision provisions may also apply to land which is offered as a gift or which changes ownership for some other reason. Even when title to the land will remain with the original owner, the mere division of land can be subject to subdivision regulations. Developments like townhouses, condominiums and timeshare units, where fee ownership does not include a separate lot, may also fall within the broad definition of subdivision by virtue of the division of land into "sites."

The enabling statutes provide that a "plat" showing a division of land which is subject to a municipality's subdivision regulations, may not also be subject to review under its site plan review authority. This avoids duplication of review. For

### SUBDIVISION REVIEW

General City Law § 32 & §33

Town Law §276 & §277

Village Law §7-728 & §7-730

example, a townhouse development may be subject to either, but not both, types of

review. Once a plat is approved and lots are created, however, development proposed on a single lot may be subject to site plan review. For example, a convenience store proposed on a lot that was once part of a subdivision of farmland, might itself be required to undergo site plan review.

A "plat" is a map prepared by a professional which shows the layout of lots, roads, driveways, details of water and sewer facilities, and ideally, much other useful information regarding the development of a tract of land into smaller parcels or sites.

### *Who reviews subdivision plats at the local level?*

Planning boards, when authorized by local governing bodies, may conduct subdivision plat review. A planning board may be authorized to review final plats (one-step) or both preliminary and final plats (two-step process). The State enabling statutes contain specific procedures for the review of both preliminary and final plats. Most

municipalities use the two-step (preliminary and final plat) process. Often, an informal sketch plan process is used to identify potential problems or concerns, even before the formal submittal of a preliminary plat. This earlier, informal step cannot be required of an applicant without a local law adopted pursuant to the Municipal Home Rule Law.

The two-step process should include the submittal of a preliminary plat showing the layout of lots, roads, open space areas, utility and drainage facilities, and approximate dimensions including preliminary plans and profiles. The final plat should present the subdivision layout and other elements contained in the preliminary plat in greater detail, and should incorporate those changes required by the planning board at the time of preliminary plat approval.

***Must a two-lot and a twenty-lot subdivision follow the same procedures?***

It is important that local subdivision regulations be drafted to contain the scope and detail of information that the municipality feels is necessary to commence review of a subdivision plat. Municipalities may classify subdivisions as “minor” and “major”, with procedures and review criteria for each type set forth in local regulations. A minor subdivision, for example, might be one involving no new streets and not more than four lots. Local regulations may also specify a procedure to be followed for the alteration of lot lines, such as where no new lots are being created.

The State enabling statutes require that a public hearing be held on a subdivision plat. If the two-step process is used, a hearing must be held at the preliminary stage. A second hearing may be held at the final stage, although it may be dispensed with if the final plat is in substantial agreement with an approved preliminary plat.

***Why should a municipality adopt subdivision regulations?***

Subdivision review is a critical tool in a

municipality’s land use management scheme, and has important consequences for overall municipal development. It must be determined whether roads, water systems, recreation areas and other services or amenities will be privately or publicly owned. Provisions should be made, in the way of performance guarantees, requiring the subdivider to complete common improvements to municipal standards, prior to the commencement of lot sales and building construction.

The subdivision of large tracts may induce other related development in the neighborhood, or produce demands for rezoning to commercial uses to serve large subdivisions. Those subdivisions connected to municipal facilities such as water or sewer infrastructure, may require the formation of special districts, and should be examined for their impact on the capacity of such facilities.

There is probably no other form of land use activity that has as much potential impact upon a municipality, as the subdivision of land.

## **CLUSTER DEVELOPMENT**

### **REQUIRED CONTENTS OF A PRELIMINARY PLAT**

At a minimum, State statutes require preliminary plats to show:

- road layout
- lot layout and approximate dimensions
- key plan
- topography
- drainage
- proposed facilities unsized (including preliminary plans and profiles)

Cluster development is a technique that allows flexibility in the design and subdivision of land. It may provide for greater open space and recreational opportunities, and can result in reduced development expenses relating to roadways, sewer lines, and other infrastructure, as well as lower costs to maintain of such infrastructure.

**CLUSTER  
SUBDIVISION  
DEVELOPMENT**  
General City Law §37  
Town Law §278  
Village Law §7-738

Cluster development concentrates the overall maximum density allowed on property onto the most appropriate portion of the property. By clustering a new subdivision, certain

community planning objectives can be achieved. For example, natural features of significance can be preserved, steep slope areas avoided, and open space can be left in large sections.

Cluster development has great potential for a municipality to maintain its traditional physical character, while at the same time providing (and encouraging) new development. It also allows a municipality to achieve planning goals that may call for protection of open space, protection of scenic views, protection of agricultural lands, protection of woodlands and other open landscapes, and limiting encroachment of development in and adjacent to environmentally sensitive areas.

In order to use cluster development, the legislative body of the municipality must authorize the planning board to review cluster subdivisions. The legislative body of the municipality may also authorize the planning board to *require* that applicants cluster development. Regardless of the form a cluster development may take - multi-family, town house, single family homes on smaller lots, or other non-residential building clusters - the maximum number of units allowed on the parcel must be no greater than that which would be allowed under a conventional subdivision layout. In order to allow an increase in density, the municipality must adopt a zoning change.

## SUPPLEMENTARY CONTROLS

Many times, a municipality has some specific concerns that it wishes to address. Sometimes these concerns are better addressed through specific regulations that focus on the individual concerns to be addressed. The following is a discussion of the many types of “stand alone” laws that are commonly adopted to address these specific municipal concerns, although they may also be usefully incorporated into zoning, site plan review or subdivision regulations. Such laws range from laws regulating the size, type and placement of signs to the protection of water resources.

### OFFICIAL MAP

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For any municipality to develop logical, efficient and economical street and drainage systems, it must protect the future rights of way needed for these systems. Such preventive action saves a municipality the cost of acquiring an improved lot and structure at an excessive cost or resorting to an undesirable adjustment in the system. To protect these rights-of ways, state statutes allow a municipality to establish an official map.

**OFFICIAL MAP**

General City Law §26, §29,  
§35, §35-A, & §36  
Town Law §270, §273, §280,  
§280-A, & §281  
Village Law §7-724, §7-734, &  
§7-736  
General Municipal Law §239-e  
& §239-f

Under the statutes, the governing body of the municipality may establish an official map of its area, showing the streets, highways, parks and

drainage systems established by law. It may add future requirements for facilities to the official map and the land so reserved may not be used for other purposes without the consent of the municipality.

The official map is final and conclusive in respect to the location and width of streets, highways and drainage systems and locations of parks shown on it. Streets shown on an official map serve as one form of qualification for the access requirements which must be met under State law, prior to the issuance of a building permit. Where the permit is denied, the law provides that in the case of hardship, the board of appeals may grant relief that will cause a change in the official map.

The official map is not the zoning map, nor is it the comprehensive plan. However, it can play an important role in implementing a municipality's comprehensive plan .

## **SIGN CONTROL**

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The use and location of signs are typically subject to municipal regulation, either as part of a zoning law or as a separate regulation. Attention is focused on the number, size, type, design and location of signs within a municipality. The issues that a municipality considers important can be brought together in a sign control program.

Signs are vital for communication. They serve both a public and private purpose. They are important in identifying businesses but they are also essential for providing directions and instructions that are important for the safety of a municipality. Signs are important to municipal character. Problems arise when signs are poorly located, improperly constructed or become too large or numerous. Without control, signs can overwhelm a municipality, damaging its character, reducing the effectiveness of communication and providing a traffic safety. With control, signs can enhance a locality and contribute to municipal character.

### ***How may signs be controlled?***

Many communities choose to link sign control with their zoning code. Zoning specifies the location and density of various land uses and it can also include standards for the nature, location and size of signs associated with these land uses. As with

other land use regulations, standards can be adopted which cover new, as well as existing non-conforming signs. These standards may also be established in a separate local law dealing specifically with signs.

Input from the commercial, industrial and residential segments of the municipality should be considered in developing sign standards. There are many options available to a municipality as to how to regulate signs, as well as to the degree of regulation. For example, some signs may only need a building permit to be placed, other signs may be approved within a site plan review procedure, and still other signs may only be placed following the grant of a special use permit. Enforcement of signage provisions should be assigned to a municipal officer, usually the building inspector or zoning enforcement officer.

Sign controls shall seek to limit the size and design of signs. Often, however, this regulation has extended to involve the *content* of a sign. The U.S. Supreme Court has examined the constitutional questions concerning freedom of speech with respect to sign controls, and has placed limits on the authority of municipalities to control the content of signs. The best approach for a municipality is to regulate the size, height, number and design of signs without regulating the content.

## **HISTORIC PRESERVATION**

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More and more communities are recognizing that they have significant historical and cultural resources that enhance their character and livability. These resources also provide economic benefits, as businesses are attracted by liveable communities, and tourists come to explore a municipality's heritage. Many communities seek to protect and enhance these resources.

It is important for a municipality to develop a comprehensive inventory of its historic properties and other cultural resources. By completing an historic resources survey, a municipality will be able to establish what buildings or collection of buildings

are worthy of preservation. Community participation in such a survey can help improve awareness of community heritage and build consensus on the benefits of protecting this heritage.



*How do we provide recognition to these resources?*

The development of a community policy to protect historic resources, and an identification of the particular resources to be protected in the community are the first steps to providing recognition of the historic value of property or collection of buildings. Once a community has established a policy of historic preservation, it can seek to formally recognize individual historic structures or groups of structures. The first level of recognition can be achieved through the adoption of a Local Historic Preservation Law which enables the community to designate individual properties as local historic landmarks, or groups of properties as local historic districts. Such a local law is also likely to provide standards for protection of these designated properties.

The historical importance of a building can also be recognized at the state or national level through listing on the State or National Register of Historic Places. These listings are managed, respectively, by the State Office of Parks, Recreation, and by the Historic Preservation and the Federal Department of the Interior, in cooperation with the property owner and local municipality. National Register listing includes recognition of the historical importance of a single property, a group of properties, or a set of properties related by a theme.

Listing on the National Register of Historic Places is an important recognition of a property's or an area's historic and cultural significance. Designation makes the property eligible for grants and loans and, possibly, federal tax credits. It also means that any federal action that might impact the

property must undergo a special review that is designed to protect the property's integrity. Similarly, listing on the State Register of Historic Places means that State agency actions that affect a designated property are subject to closer review, and makes the property eligible for grant assistance. Projects affecting properties listed on the National Register may become Type 1 actions under the requirements of the State Environmental Quality Review Act. Many of these review actions and funding benefits are also applicable to those properties that are *eligible* for listing on either Register, but have not actually been listed.

### **PROTECTION OF HISTORIC PLACES, BUILDINGS & WORKS OF ART**

General Municipal Law §96-a

*How does a municipality protect these historic resources?*

Once historic properties have been identified and recognized, it is necessary to provide means to protect them from degradation. Recognition in itself provides no protection. It is important to ensure that the historic protection policies of the comprehensive plan are integrated within the municipality's zoning regulations and land use controls. Appropriate use, density, siting and design standards can go a long way to protect historic properties. In addition, General Municipal Law §96-a provides specific authority to a city, town, village or county to protect and enhance historic resources .

### **LOCAL HISTORIC PRESERVATION PROGRAMS**

General Municipal  
Law §119-dd

A municipality may also consider adoption of a Local Historic Preservation Law based on State enabling legislation. Typically, the municipality establishes a Local Historic

Preservation Committee, as well as the procedures for designating historic properties as local landmarks and collections of historic properties as

historic districts. It can also provide for the review of construction, alteration or demolition of designated historic properties, and allow consideration of the impact of these proposals on an historic district.

If a municipality does not wish to adopt a local historic preservation law, it may want to consider a Demolition Law. Such a law would require a delay before demolition of a historically significant building. This allows time for a community to examine alternatives to demolition, such as purchase of the property by a government or not-for-profit group.

In addition to specific historic preservation initiatives, a community can use other planning, zoning and land management techniques to protect historic properties or districts. These include land use controls such as site plan review, clustering regulations and transfer of development rights; as well as other approaches, such as SEQRA, local tax policies, building codes, acquisition, and improvement grants.

### **ARCHITECTURAL DESIGN CONTROL**

Many municipalities have concerns over the impact of the design of individual buildings on both the character of the municipality and the way the buildings fit together.

Many aspects of a building's design are regulated through standards for siting, orientation, density, height and setback within a municipality's zoning code. Some municipalities want to go beyond dealing with the general size and siting of a building and its physical relationship with adjacent properties, to deal with the appropriateness of the actual architectural design of the building. The review may include examining such design elements as facades, roof lines, windows, architectural detailing, materials and color.

Architectural review generally requires a more subjective analysis of private development proposals than is possible within most zoning

codes. To do this, communities often establish an advisory Architectural Review Board, whose area and extent of jurisdiction are established through local law or ordinance. Often communities focus design control on a limited geographic area within the community, such as a downtown commercial area, an important road corridor, or a historic area. The Architectural Review Board should be able to offer guidance on design issues to other boards, such as the Planning Board or Zoning Board of Appeals. Often, a community chooses to link design review to historic preservation controls, with a focus on the design of new buildings and alterations to existing buildings within historic districts.

In addition to seeking to control design, some communities take the positive step of producing a design manual. Design manuals can provide guidance on acceptable design features and provide standards for review.

### **MOBILE HOME REGULATIONS**

Mobile homes come in all shapes and sizes. As a use distinct from site-built homes, their placement in a community can be permitted or prohibited in certain zoning districts.

#### **MOBILE HOMES**

Town Law §130 (21)  
Village Law §4-412(1)

Federal home safety and construction standards, and industry efforts to

improve their product, have turned mobile homes, also known as "manufactured housing," into an affordable alternative to site-built homes. Visually, they can be virtually indistinguishable from the rest of the homes in the neighborhood. Through provisions of local laws, such as foundation and skirting standards, a community can provide for the orderly development of attractive, affordable housing in a manner that preserves or enhances surrounding property values. Municipalities may not impose construction standards on mobile homes which are not identical to the specifications established by the Federal Department of Housing



and Urban Development.

***Regardless of the similarities, may a municipality treat mobile homes differently from site-built homes?***

Just as a municipality may establish different location, setback, lot size and aesthetic requirements for multi-family homes than for single-family homes, a municipality may also establish separate standards for mobile homes as distinct from site-built homes.

A municipality may regulate mobile homes using a stand alone law without zoning, or in combination with zoning. Such laws may regulate their placement and may confine them to districts or parks. The municipality may wish to include specific installation requirements for individual units, and/or standards for manufactured housing developments, to further ensure their conformance to community standards. Whatever kinds of restrictions a municipality places on manufactured housing, a municipality cannot ban such housing from the community.

## **JUNK YARD REGULATIONS**

If a municipality does not have its own junk yard law or zoning law addressing the siting of junk yards, it must apply the standards set forth in General Municipal Law §136 for automobile junk yards. This state law regulates the collection of junk automobiles, including the licensing of junk yards and regulation of certain aesthetic factors. The law is limited in its application, however, to sites storing two or more unregistered motor vehicles.

A municipality may expand the state definition of “junk yard” to encompass other types of

junk, such as old appliances, household waste, or uninhabitable mobile homes in order to regulate

**CONTROL OF  
AUTOMOBILE  
JUNKYARDS**

General Municipal Law §136

aspects of junk not covered by state law, and to ensure greater compatibility with surrounding land uses.

If done through zoning, a municipality can limit junkyards to specific areas of the community. If properly drafted, such zoning regulations may even phase out existing junkyards that are inappropriately located.

## **MINING CONTROL**

***Can a municipality control the location of mines within its borders?***

Local governments can enact zoning regulations establishing districts within which mining may or may not be a permissible use. The permissible use may be “as-of-right” or may require a special use permit. In addition, if a municipality through its comprehensive planning process has determined that mining is not a desirable use in its community, it may zone its land to prohibit the establishments of new mines within its borders.

In general, the New York State Mined Land Reclamation Law regulates mining operations that intend to remove more than one thousand tons or 750 cubic yards of minerals from the earth within twelve successive calendar months. Such mines require approval by the New York State Department of Environmental Conservation (DEC). Mines smaller than this threshold can be regulated by a local mining or zoning law. However, even though DEC regulates larger mines, a municipality may regulate the location of all mines through its zoning law.

Under the Mined Land Reclamation Law, when a municipality permits state-regulated mining to occur within its borders, the municipality may regulate (1) the entrances and exits to and from the mine on roads controlled by the municipality, (2)

**MINED LAND  
RECLAMATION LAW**  
Environmental  
Conservation Law §23-  
2703 and §23-2711

routing of mineral transport vehicles on roads controlled by the municipality, and (3) enforcement of the reclamation conditions set forth in the DEC mining permit.

DEC must notify a municipality of all applications for new mining projects. In response, a municipality may make *recommendations* to the DEC regarding such things as: appropriate setbacks, barriers to restrict access to the mine, dust control, hours of operation, and whether the proposed mine is in an area where mining is a permissible activity.

### **SCENIC RESOURCE PROTECTION**

Scenic resources are important in defining community character. These resources can be threatened by development and many communities are now seeking ways to mitigate the impacts of development on the landscape. High priority is often placed on protecting specific views and view points, and the general quality of a landscape.

#### ***How does a municipality identify and protect important scenic resources?***

One of the first steps is to devise a visual assessment program, which is often done through the comprehensive planning process. Development of such a program can lead to an identification of the important components in the landscape, key parcels or areas that need protection, and areas that may need improvement because they might impair scenic quality.

Policies to protect scenic resources should be included in a community's comprehensive plan, along with maps illustrating the scenic resource. Once this has been done, it is important to integrate policies into regulations. Appropriate use, density, siting and design standards can protect scenic resources by such methods as limiting the height of buildings or fences in important scenic areas.

Once the local zoning code has been modified, the community should consider other planning, zoning

and land management techniques to protect scenic resources. These include site plan review, subdivision, clustering, transfer of development rights, and acquisition of easements.

### **OPEN SPACE PRESERVATION**

Many communities are now recognizing the value of "open space", i.e. vacant land and land without significant structural development. Open space serves many functions within a community: economic, health and safety, recreational, ecological, aesthetics, and community character. As communities recognize such benefits, they are increasingly turning to ways of identifying and protecting open space resources.

A good way for a municipality to assess the importance of its open space resources is to produce an Open Space Plan or to include an assessment of open space resources as part of its comprehensive plan. Here, a community decides how to categorize its open space resources, examines their use and function within the community, sets priorities for their protection, and considers the best way to use and protect open spaces. It is important to remember that open space is more than just undeveloped or vacant land, but that it can include recreational sites, parks, greenways, trail networks, cemeteries, forests and woodlands, wetlands, agricultural land and even historic properties which are restricted from further development. All of these amenities come together with the developed land to provide community character.

Much has been written on the value and benefits of open space and how to prepare an open space plan. One such publication, "Local Open Space Planning, A Guide to the Process", is available from the New York State Department of Environmental Conservation.

Once a community has identified its open space resources, it can develop policies to protect them. Those policies should be expressed in the open space plan and in the community's comprehensive

plan, along with the maps showing open spaces. Once this has been done, it is important to ensure that the open space policies of the comprehensive plan are implemented through the municipality's land use controls.

## **AGRICULTURAL LAND PROTECTION**

Many communities are aware of the important contribution agriculture makes to the economy and character of their community and New York State. They are also concerned over the future of agriculture, both in terms of the loss of agricultural land to development, and in terms of the loss of economic viability of agricultural activity.

One of the critical issues involved in land use planning decisions for agricultural uses is to ensure that agriculture protection deals primarily with the preservation of agriculture as an *economic activity* and not just as a use of open space.

Traditionally, agricultural uses are part of large lot, low density, residential zoning districts. With increased residential development, however, conflicts between agricultural and residential uses have increased.

Complaints about noise, odors, dust, chemicals, and slow-moving farm machinery may occupy enough of the resources of a farmer so as to have a negative impact on the viability of his or her farming activities. To address those concerns, and to maintain viable farming, municipalities sometimes turn to a variety of specific farmland preservation techniques. Such techniques include agricultural zoning, subdivision, clustering, transfer or purchase of development rights, and easements. In addition, communities are utilizing agricultural districts, tax assessment incentives, and "right-to-farm" initiatives to help ensure the viability of the agricultural activity.

### ***What is a State agricultural district?***

Article 25-AA of the Agriculture and Markets Law was enacted in 1971 to conserve and protect

agricultural land for agricultural production and as a valued natural and ecological resource. To be eligible for designation, a State agricultural district must be certified by the county for participation in the State program. Once designated, participating farmers within the district can receive reduced property assessments and relief from local nuisance claims.

State law requires that municipalities evaluate and consider the possible impacts of certain projects on the functioning of adjacent farms. These projects, which require "agricultural data statements", include certain land subdivisions, site plans, special use permits, and use variances.

Applicants for the above types of approval for projects which involve property within 500 feet

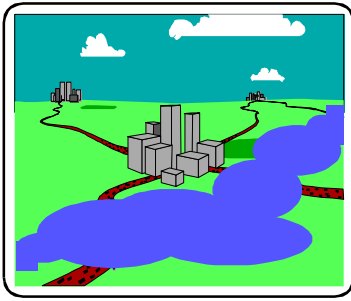
**AGRICULTURAL DATA  
STATEMENTS**  
Town Law §283-a  
Village Law §7-739

of a farm operation in an agricultural district, must provide extra information to the municipal board reviewing the application. In addition, the neighboring farmers must be notified in writing of the proposed project, and the project must be referred to the county planning board for review.

## **FLOODPLAIN MANAGEMENT**

Floodplain regulations are land use controls governing the amount, type and location of development within defined flood-prone areas.

Federal standards which apply to communities which that are eligible for Federal Flood Insurance Protection, include identification of primary flood hazard areas, usually defined as being within the 100-year floodplain. Within flood hazard areas, certain restrictions are placed on development activities. The restrictions include a requirement that buildings be elevated above flood elevations or be flood-proofed, and also include prohibitions on the filling of land within a floodplain.



Municipalities can adopt their own floodplain regulations which may be more stringent than the federal standards. Local floodplain regulations can identify a larger

hazard area (such as a 500-year floodplain), and may also prohibit certain types of construction within flood hazard areas. In this way, local floodplain regulations can tailor flood hazard protection to local needs.

Virtually all municipalities in New York contain flood hazard areas. Flooding in developed areas can result in costly damage and destruction, as well as loss of life. And, for communities that don't participate in the National Flood Insurance Program, no flood insurance is available to individual land owners.

## **WETLAND PROTECTION**

"Wetlands" are areas which are washed or submerged much of the time by either fresh or salt water. In state regulations, they are defined chiefly by the forms of vegetation present.

Wetlands provide a number of benefits to a community. Besides providing wildlife habitat, wetlands also provide habitat-related recreation opportunities, protect the water supply, and provide open space and scenic beauty that can enhance local property values. Wetlands also serve as storage for stormwater runoff, thus reducing flood damage and filtering pollutants. In coastal communities, they also serve as a buffer against shoreline erosion. The preservation of wetlands can go a long way toward protecting water quality; increasing flood protection; supporting hunting, fishing and shell fishing; providing opportunities for recreation, tourism and education; and enhancing scenic beauty, open space and property values.

*Doesn't the State regulate wetlands?*

State wetland regulations protect freshwater wetlands greater than 12.4 acres (1 acre in the Adirondack Park), freshwater wetlands of unusual local importance, and tidal wetlands. The State has established adjacent wetland buffer zones, prohibiting certain activities within such areas, and has established standards for permit issuance. The United States Government, through the Army Corps of Engineers, also regulates federally-defined wetlands.

When considering enactment of a local wetland law, a municipality should consult with the New York State Department of Environmental Conservation, which regulates state-regulated wetlands. Wetlands may also be indirectly regulated through subdivision and site plan review laws, which should guide development so as to avoid inappropriate areas of a site.

## **WATER RESOURCE PROTECTION**

The main reason for protecting water resources is to protect municipal and private drinking water supplies from disease-causing microorganisms. Failure to adequately protect drinking water supplies can lead to the need for treatment of drinking water at great expense to the land owner or the municipality.

Municipalities may adopt laws to protect groundwater recharge areas, watersheds and surface waters. Local sanitary codes can be adopted to regulate land use practices that have the potential to contaminate water supplies. Sanitary codes can address the design of storm water drainage systems, the location of drinking water wells, and the design and placement of on-site sanitary waste disposal systems. Water resources can be further protected through the adoption of land use laws that prohibit certain potentially polluting land uses in recharge areas, watersheds and near surface waters. Site plan review laws and subdivision regulations may also be used to minimize the amount of impervious surfaces, and to require that stormwater systems be designed to

protect water supplies.

Municipalities also have the authority under the Public Health Law to enact regulations for the protection of their water supplies, even if located outside of the municipality's territorial boundaries. Such regulations must be approved by the State Health Department.

## **EROSION AND SEDIMENTATION CONTROL**

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Development, earth-moving and some agricultural practices can create significant soil erosion and the sedimentation that inevitably follows. Through the adoption of proper erosion, sedimentation, and vegetation-clearing controls, a community can protect development from costly damage, retain valuable soils, protect water quality, and preserve aesthetics within the community.

Such regulations are often incorporated into one of the major land use control mechanisms. However, a municipality may wish to establish such controls in a stand-alone law. Such a law can be specifically directed at grading, filling, excavation and other site preparation activities such as the clear-cutting of trees or the removal of all vegetation. Such a law can address the issue of how construction and other activities are carried out and can include certain minimum standards. These standards can include, for example, limits on the time land can be allowed to remain in a disturbed state, land stabilization measures, storm-water management regulations, water-body protection, and "best management practices." A system of review can also be established to ensure compliance with the standards. In addition, in a stand-alone law controls can be applied to projects regardless of whether those projects might also be subject to zoning, subdivision or site plan regulations.

## **ENVIRONMENTAL REVIEW**

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The State Environmental Quality Review Act (SEQRA) was established to provide a procedural framework whereby a suitable balance of social,

economic and environmental factors would be incorporated into the community planning and decision-making processes. SEQRA applies to all State agencies and local governments when they propose to undertake an action themselves (such as construct a public building), or when they are considering whether to approve or fund projects proposed by private owners.

### **STATE ENVIRONMENTAL QUALITY REVIEW ACT**

Environmental Conservation Law Article 8  
NYS Codes, Rules & Regulations Part 617

The intent of SEQRA is to review the environmental impacts of a proposed project and to take those impacts into account when deciding to undertake, approve, or fund it. Those impacts that cannot be avoided through modification of the project should be mitigated through conditions.

### ***When does SEQRA apply?***

State regulations categorize all actions as either "Type I" (more likely to have a significant environmental impact), "Type II" (no significant impact), or "Unlisted". For example, the granting of an area variance for a single-family residence is a Type II action, therefore SEQRA does not apply to it and not SEQRA review is required. Type I actions are those which are more likely to have an adverse effect on the environment, and a municipality's decision regarding a Type I action is subject to specific notice, filing and publication requirements set forth in the statute.

The first step in the SEQRA process is to determine if the statute is applicable. If SEQRA applies, then a "lead agency" must be established, and the lead agency must make a determination whether the action may have a significant adverse impact on the environment. If it is determined that it will not have a significant adverse impact, a "Negative Declaration" is made by the lead agency, after which it may proceed to its ordinary regulatory review of the matter under consideration. If it is determined that an action may have a significant adverse effect on the environment, an

Environmental Impact Statement (EIS) must be prepared by either the project sponsor or by the lead agency. The SEQRA regulations provide that an application for approval of an action is not complete until either a negative declaration is filed or a draft EIS has been accepted for public review by the lead agency. An action which is the subject of an EIS may not be approved until at least ten days after the filing of the final EIS.

***Can a municipality tailor SEQRA to municipal needs?***

SEQRA review can serve to supplement local controls when the scope and environmental impacts of a project exceed those anticipated by existing land use laws. The SEQRA review process also helps to establish a clear record of decision-making should the municipality ever have to defend its actions.

Municipalities have the authority to adopt their own lists of Type I and Type II actions, but they may not delete any action already on the State Type I or Type II lists. They may also, after public hearing and notice to the Department of Environmental Conservation, designate a specific geographic area as a Critical Environmental Area (CEA). Following designation, the potential impact of an action on the environmental characteristics of the CEA must be evaluated in determining the significance of a Type I or an Unlisted action.

SEQRA is a far-reaching statute that can provide a municipality with critical information about the impacts of a land development project, in order that a more informed decision may be made on the project. In many cases, a project can be modified to avoid the environmental effects disclosed through the SEQRA process. This publication is not intended to be a guide to SEQRA, and because strict observation of its procedures is required, it is important to gain at least a basic knowledge of the statute. There are several publications available from DEC which thoroughly explain SEQRA. This material is available at your nearest DEC office. In addition, technical assistance can be obtained by

contacting the Regulatory Affairs Unit at your Regional DEC Office or at the central office in Albany.

## **MORATORIA (INTERIM DEVELOPMENT REGULATIONS)**

A moratorium is a local law or ordinance used to temporarily halt new land development projects while the municipality revises its comprehensive plan, its land use regulations, or both.

Moratoria, or interim development regulations, are designed to restrict development for a limited period of time. The duration of a moratorium should be specified when enacted, and should be tied to the time period necessary to develop a plan or adopt local regulations. In some cases, moratoria are enacted to halt development while a municipality seeks to upgrade its public facilities or its infrastructure.

Communities have various options in the enactment of moratoria. They may, for example, enact a moratorium on all development. Alternately, they may place moratoria on specific types of development. Moratoriums can apply to zoning approvals, site plan approvals, subdivision approvals, building permits, or other land use approvals.

***What should be included in a moratoria law?***

The elements which should be included in any legally defensible moratorium law are (1) a clear statement of the basis or reason for the moratorium; (2) a stated duration no longer than necessary to accomplish the creation or update of comprehensive community plans or regulations, or to upgrade infrastructure; (3) clear definition of the activity or activities placed under moratorium; (4) a treatment of whether activities or permit processes begun prior to the moratorium will enjoy vested rights; and (5) an administrative appeal

process.

The municipality must also take care, when adopting a moratorium, to follow strictly the procedures of the state enabling laws for amending zoning. Finally, the municipality should proceed to active work on updating its zoning regulations or its comprehensive plan during the period the moratorium is in effect.

## DEPARTMENT OF STATE LOCAL GOVERNMENT PUBLICATIONS

If you would like more information relating to local government powers and responsibilities, please contact the Department of State's Division of Local Government. Some of the publications available to local officials are:

**Guide to Planning and Zoning Laws in New York State.** This essential publication for municipal officials, attorneys and planning boards is newly revised. It has the complete text of relevant laws -- including statutory changes from the 1996 Legislative Session.

**Zoning Board of Appeals.** Newly revised, this booklet explains the legal framework surrounding the powers and duties of zoning boards of appeals. It includes all statutory provisions effective as of July 1, 1994.

**Site Development Plan Review.** This booklet discusses submission requirements, review standards, and development considerations regarding the site plan review process. It includes a discussion of the state enabling laws, illustrative plan regulations, a sample application and design review methodology.

**Adopting Local Laws.** This booklet is a plain

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# **Zoning and the Comprehensive Plan**

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**JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES**

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# ZONING AND THE COMPREHENSIVE PLAN

## Introduction

New York's zoning enabling statutes (the state statutes which give cities, towns and villages the power to enact local zoning laws) all require that zoning laws be adopted in accordance with a comprehensive plan. The comprehensive plan should provide the backbone for the local zoning law.

To understand the power to zone, one must understand the comprehensive plan. While the Town Law, General City Law and the Village Law provide a general definition of a comprehensive plan, the adoption of a formal plan under these statutes is voluntary.

### Comprehensive Plan Statutes

Town Law §272-a  
Village Law §7-722  
General City Law §28-a

Communities which choose not to utilize the process provided in the statutes still must comply with the comprehensive plan requirement. They do this by referring to the substantial body of court decisions which historically have provided New York's understanding of the comprehensive plan.

This publication will describe how the term comprehensive plan came into being, will analyze case law to provide the court-defined meaning of the term, and will set forth the means to adopt a formal comprehensive plan under the enabling statutes.

## Historical Perspective

In describing the historical development of zoning and the events precipitating the adoption in New York of the state's first zoning enabling act, Edward M. Bassett wrote:

It may fairly be said, however, that the zoning enabling act embodied in the New York City charter and the building zone resolution of that city constituted the first comprehensive zoning of height, area, and use in this country.<sup>1</sup>

He described earlier predecessors to *comprehensive zoning* as having a single purpose only, such as to establish height limitations or to prohibit certain uses.<sup>2</sup> The concept of *comprehensiveness*, both as to purposes and geographical scope, distinguished the first modern zoning laws. It was their comprehensiveness which caused early proponents of zoning to fear whether zoning local laws could withstand constitutional attack, yet, it was the laws' comprehensiveness which ultimately protected them from declarations of unconstitutionality. The concept of *comprehensiveness* still applies, in the statutory requirement that zoning be adopted in accordance with a *comprehensive (or well considered ) plan*.<sup>3</sup>

## Early Challenges to Zoning

Common law has long recognized that certain uses of property were, or could be, so undesirable that neighboring land owners or the community as a whole had the right to request the uses' termination. This is the theory of *nuisance*.<sup>4</sup> Governmental regulation of the use of property through general legislative enactment, that is, through the local zoning ordinance, went well beyond common law nuisance, but the seminal United States Supreme Court case upholding regulation of land use through zoning, *Euclid v. Ambler Realty Co.*, looked to the traditional law of nuisance, as it considered whether government possessed the power to restrict use of land by general application of law:

Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality....nuisance may be merely a right thing in the wrong place, - like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.<sup>5</sup>

The Court looked to states' case law and, most importantly for this analysis, works of planning experts of the time:

The matter of zoning has received much attention at the hands of commissions and experts, and the results of their investigations have been set forth in comprehensive reports. These reports, which bear every evidence of painstaking consideration, concur in the view that the segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life; greatly tend to prevent street accidents....

If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.<sup>6</sup>

The comprehensive scope of zoning was used in *Ambler* to justify a general finding of constitutionality, but the door was left open for constitutional challenge should a zoning ordinance be found to lack a substantial relationship to the public health, safety, morals or general welfare. How could a community evidence that it had properly fashioned its zoning ordinance in light of the "circumstances and the locality?"

## The Zoning Enabling Laws

Early zoning enabling laws were fashioned with the view that zoning risked being declared unconstitutional because it had the potential to severely limit zealously guarded property rights.<sup>7</sup> From the lawyer's point of view, the comprehensive plan provided the means to connect the circumstances and the locality to the zoning ordinance. It was, and is, insurance that the ordinance is reasonable and "bears a reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end."<sup>8</sup>

From the planner's perspective, the comprehensive plan provided the means to, in theory, remove the planning process from immediate political considerations and allow for more objective analysis of community growth and need:

Inasmuch as [the zoning laws] have an intimate effect upon land they should be framed so far as possible with the knowledge and cooperation of the landowners. The enabling act requires preparatory procedure to make sure that the system is worked out as a coordinated whole. This involves the appointment of a zoning commission to prepare the proposed ordinance and zoning map, the making of a preliminary report to the local legislative body, the holding of preliminary hearings thereon, and the holding of a public hearing by the legislative body. The ordinary state enabling act provides checks and precautions to prevent hasty and impulsive changes.<sup>9</sup>

*The comprehensive plan is insurance that the ordinance is reasonable and bears a reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end.*

## In Accordance with a Comprehensive Plan

In New York, the zoning enabling acts continue to require that zoning be undertaken "in accord with a well considered plan"<sup>10</sup> or "in accordance with a comprehensive plan."<sup>11</sup> Unless the town, city or village has adopted a comprehensive plan document pursuant to and as defined by recently enacted statutory authority,<sup>12</sup> which is described later in this publication, local officials *must* refer to the extensive body of case law to determine how zoning can meet the comprehensive plan requirement.

"Comprehensive" is defined as "[i]ncluding much; comprising many things; having a wide scope; inclusive..." and "plan" is defined as "[a] method or scheme of action; a way proposed to carry out a design; project...."<sup>13</sup> Put together, the words "comprehensive plan" intimate that the way proposed must be capable of being discerned and it must be inclusive. Case law has agreed.

From the planner's perspective, a plan is "inclusive" and comprehensive when it addresses a wide range of planning issues, perhaps through a series of component, topic-related plans. These could include such matters as transportation patterns and future needs, natural and built resources inventories, population trends and so forth. From the lawyer's point of view, a zoning law or

amendment is “inclusive” when it has been enacted after and in accordance with careful study and consideration and when it carries out a greater “purpose” of the community.

A common theme in the cases interpreting the requirement that zoning be in accordance with a comprehensive plan is that the zoning law (or amendment) be carefully studied before it is enacted. In *Thomas v. Town of Bedford*,<sup>14</sup> the Court of Appeals upheld a rezoning from residential to research-office use, finding that it had been enacted after careful study and consultation with experts and after extensive public hearings. In *Udell v. Haas*, the Court of Appeals stated that “one of the key factors” to be used by the courts in determining whether zoning is “in accordance with a comprehensive plan” is whether forethought has been given to the community’s land use problems. The court went on to say:

Where a community, after a careful and deliberate review of ‘the present and reasonably foreseeable needs of the community’, adopts a general developmental policy for the community as a whole and amends its zoning law in accordance with that plan, courts can have some confidence that the public interest is being served.<sup>15</sup>

Where a local government can show that suitable studies and deliberations preceded adoption of the zoning law amendment, the potential that a zoning action reflects comprehensive planning, increases. To this end, environmental assessments and impact statements can support a conclusion that a local zoning enactment “reflected a sufficient degree of comprehensiveness of planning.”<sup>16</sup>

## **Environmental Reviews and Zoning**

It is not unusual for State Environmental Quality Review Act (SEQRA) challenges and comprehensive planning challenges to go hand in hand. SEQRA requires expansive environmental review and thoughtful consideration of alternatives to governmental actions.<sup>17</sup>

Both the broad definition of “environment” for SEQRA purposes and the process of evaluating environmental impacts under SEQRA “afford[s] an excellent opportunity for the local decision maker to weigh factors that courts have traditionally used in looking at whether an underlying context of comprehensive planning was maintained.”<sup>18</sup> Briefly stated, adoption and amendment of zoning laws are “actions” for purposes of SEQRA.<sup>19</sup> Prior to undertaking any action, a government agency must determine the “significance” of the action by evaluating potential significant adverse environmental impacts the action may have.<sup>20</sup> Actions which may include the potential for at least one significant adverse environmental impact require the preparation of an environmental impact statement (EIS).<sup>21</sup>

An EIS “must assemble relevant and material facts upon which an agency’s decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives.”<sup>22</sup>

Substantive compliance with SEQRA has been defined by the courts to require that a governmental agency take a “hard look” at the record, which includes potential environmental impacts and alternative decisions, and make a “reasoned elaboration of the basis for its decision.”<sup>23</sup> This standard is similar to the *Udell v. Haas* requirement for “careful and deliberate review” as evidencing comprehensive planning, discussed above. Perhaps for this reason, evidence that a local legislative



body studied a well-prepared EIS prior to adoption of a zoning law amendment has been upheld by the courts as meeting the comprehensive planning requirements.<sup>24</sup>

## Spot Zoning

Perhaps the most important theme in the cases interpreting the requirement that zoning be in accordance with a comprehensive plan is the language in the leading cases indicating that the courts will look to see whether zoning is for the benefit of the whole community. Zoning must further the general welfare, but this requirement does not preclude future amendment to the zoning law in order “to respond to changed conditions in the community... . The question is whether the change “conflict[s] with the fundamental land use policies and development plans of the community ... .”<sup>25</sup>

A review of cases relating to “spot zoning” is illustrative, for spot zoning is the antithesis of zoning undertaken in accordance with a well-considered plan. Spot zoning stereotypically refers to the rezoning of a small parcel of land to a use category different from the surrounding area.

Size of the parcel is relevant but not determinative, however, for illegal “spot zoning” occurs whenever the “change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community.”<sup>26</sup> The landmark case in the field of spot zoning is *Rogers v. Village of Tarrytown*,<sup>27</sup> in which the Court of Appeals defined the rezoning of relatively small parcels of land in terms of the comprehensive planning requirement:

***The question of whether a rezoning constitutes spot zoning should be answered by determining whether the rezoning was done to benefit individual owners rather than pursuant to a comprehensive plan for the general welfare of the community***

Thus, the relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use, but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community.<sup>28</sup>

The fact that rezoning will benefit the landowner will not, on its own, invalidate the rezoning action, but, to be in accordance with a comprehensive plan, the rezoning must also further some clearly identified public purpose. In *Save Our Forest Action Coalition, Inc. v. City of Kingston*, a 107 acre parcel within a residential district was rezoned light industrial in order to accommodate a local manufacturing firm and the local development corporation. The court rejected a spot zoning challenge:

Here, the primary motivation for the zoning amendment was to support local economic development through retention of the City’s largest employer and to reap associated economic and tax benefits in connection with the development of a business park. The determination was made after an extensive review process, including a consideration of the impact on adjoining residential areas, consistency with existing zoning plans, environmental concerns and the availability of other

suitable sites....In our view, the record discloses that sufficient ‘forethought has been given to the community’s land use problems’ ... and that there was a ‘reasonable relation’ between the rezoning determination and the worthwhile goal of improving the economic health of the community....[citations omitted] <sup>29</sup>

If the record shows that the zoning amendment seeks to accomplish valid public purposes and that “sufficient forethought” has been given it, the comprehensive plan requirement is met, even where the zoning amendment affords distinct treatment to a relatively small parcel.<sup>30</sup> Hence, if the evidence reveals that the rezoning was not enacted to benefit the community as a whole or was enacted without regard to the community, the rezoning will fail to meet the comprehensive plan requirement.<sup>31</sup>

## Regional Housing and the Comprehensive Plan

Zoning must be enacted to benefit the community, but what constitutes a “community” when housing is at issue?

In 1975, the Court of Appeals decided the case of *Berenson v. Town of New Castle*<sup>32</sup> which broadened the concept of comprehensive plans to include regional needs. Although the case is often cited for its impact on so-called “exclusionary zoning” practices, the decision actually extends the statutory mandate that zoning be in accordance with a comprehensive plan.

The zoning ordinance in question in *Berenson* excluded multi-family residential housing as a permitted use in any zoning district in the town. The court recognized the right of a municipality to set up various types of use zones, with no requirement that each must contain some sort of housing balance, stating that its concern was not whether each zone was a balanced community but whether the municipality itself was to be “a balanced and integrated community.” The court then proceeded to lay down a test for this determination, the first branch of which was that a “properly balanced and well-ordered plan for the community” had been provided (citing *Udell v. Haas, supra*). It is the second branch of the test that expands the concept of comprehensive plans, namely, whether a zoning ordinance evidences that consideration is given to regional needs and requirements. The court stated that:

***Zoning regulations should be based on a comprehensive plan which examines the housing needs of the community and the region***

... There must be a balancing of the local desire to maintain the status quo within the community and the greater public interest that regional needs be met. Although we are aware of the traditional view that zoning acts only upon the property lying within the zoning board’s territorial limits, it must be recognized that zoning often has a substantial impact beyond the boundaries of the municipality. Thus, the court, in examining an ordinance, should take into consideration not only the general welfare of the residents of the zoning township, but should also consider the effect of the ordinance on the neighboring communities.<sup>33</sup>

The “regional needs” branch of the *Berenson* case has not been expanded beyond consideration of regional housing needs, and neither does it require that a particular development project include low-income housing.<sup>34</sup> Instead, the question is whether the needs of the community and the region have been accommodated somewhere in the zoning law.<sup>35</sup>

## Evidence of Comprehensive Planning

Finally, how may a comprehensive plan be discerned? A comprehensive plan need not be a single document. It need not be a formally adopted plan.<sup>36</sup> Instead, whether an inclusive scheme of action exists or has been undertaken is an evidentiary matter more complex than pulling out the single planning document. For instance, the courts will find evidence of a plan in the zoning actions themselves, if those actions are in furtherance of a land use policy which benefits the entire community.<sup>37</sup> In *Asian Americans for Equality v. Koch*, the Court of Appeals stated:

A well-considered plan need not be contained in a single document; indeed, it need not be written at all. The court may satisfy itself that the municipality has a well-considered plan and that authorities are acting in the public interest to further it by examining all available and relevant evidence of the municipality’s land use policies...

<sup>38</sup>

Environmental reviews, impact statements and findings under the State Environmental Quality Review Act could evidence the plan.<sup>39</sup> Legislative findings relating to the adoption of an ordinance or local law could evidence the plan,<sup>40</sup> as could minutes of the legislative body<sup>41</sup> and relevant studies.<sup>42</sup> A previously adopted master plan or comprehensive plan may evidence comprehensive planning.<sup>43</sup> In *Town of Bedford v. Village of Mount Kisco* the Court of Appeals held that:

...zoning changes must indeed be consonant with a total planning strategy, reflecting consideration of the needs of the community....What is mandated is that there be comprehensiveness of planning, rather than special interest, irrational *ad hocery*. The obligation is support of comprehensive planning, not slavish servitude to any particular comprehensive plan. Indeed sound planning inherently calls for recognition of the dynamics of change.[citations omitted]<sup>44</sup>

### ***Examples of where courts have found evidence of comprehensive planning***

***P a zoning law***  
***P environmental reviews & findings***  
***P legislative findings relating to adoption of a law or ordinance***  
***P minutes of the legislative body***  
***P studies***  
***P previously adopted plan***

What must the evidence that comprehensive planning occurred, show? The “courts have required the municipal governing body to zone in accordance with a land use policy which is in the interest of the overall community.”<sup>45</sup> The local legislative body must show that it has given “some thought to the community’s land use problems”<sup>46</sup> and, implicitly, must have fashioned its zoning as a

regulatory means to address these problems:

The function of land regulation is to implement a plan for the future development of the community....Its exercise is constitutional only if the restrictions are necessary to protect the public health, safety or welfare. The requirement of a comprehensive or well-considered plan not only insures that local authorities act for the benefit of the community as a whole but protects individuals from arbitrary restrictions on the use of their land... .<sup>47</sup>

The connection between *planning* and *regulation* serves both the underlying constitutional need to find a reasonable relationship between the ends sought to be achieved and the means chosen, and the strong underlying policy concern that regulation through zoning serve the entire community. The “challenged zoning resolution itself need not be a well-considered plan, as long as it is in accord with one.”<sup>48</sup> Whether the zoning law or amendment was adopted pursuant to a comprehensive planning *process* is an evidentiary question which may be answered by a single comprehensive plan document, minutes of legislative meetings, the text of the zoning law itself and environmental impact statements, among other means.

## Adoption of a Comprehensive Plan

Until recently, the court-fashioned definition of “comprehensive plan” alone provided guidance to towns, villages and cities as they drafted and enacted zoning laws. While the court-fashioned definition provides guidance in determining whether a zoning law has a rational basis, it does not require, or allude to, a process by which a local government may create, debate and adopt long range visions for their communities. Recent statutory change has provided structure and clarity to the term comprehensive plan.

Chapter 209 of the Laws of 1993 amended the zoning enabling statutes to define and provide the process for adopting a “comprehensive plan.”<sup>49</sup> Under these provisions, a comprehensive plan:

... means the materials, written and /or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement,

### *What may a comprehensive plan address?*

**Goals, objectives and policies for the immediate and long-range enhancement growth and development of the community**

**Existing and proposed land uses, and their intensity**

**Agricultural uses, historical resources, cultural resources, natural resources, coastal resources and sensitive environmental areas**

**Population, demographic and socio-economic trends**

**Transportation facilities**

**Utilities and infrastructure**

**Housing resources and needs**

**Infrastructure**

**Other governmental plans and regional needs;**

**Economic development;**

**Proposed means to implement goals, objectives and policies.**

growth and development of the town located outside the limits of any incorporated village or city.<sup>50</sup>

Adoption of a comprehensive plan pursuant to these provisions is voluntary. If a city, town or village chooses to utilize this process, the resultant plan may range from a set of policy or vision statements to a very lengthy document composed of many subject-specific component plans (e.g. transportation, natural resources, historic resources, population statistics, etc.). Once adopted, however, all land use regulations must be in accordance with it.<sup>51</sup> This usually means (though not mandated) that plan adoption is followed by the adoption of a series of zoning laws designed to ‘implement’ the comprehensive plan. For these communities, then, the statutory requirement that zoning be “in accordance with” a comprehensive or well-considered plan refers to the comprehensive plan adopted pursuant to Town Law, §272-a, Village Law, §7-722 or General City Law, §28-a, as the case may be. For those communities which choose not to adopt a comprehensive plan pursuant to these statutes, the traditional, court-fashioned definition continues to apply.<sup>52</sup>

A comprehensive plan may include, “at the level of detail adapted to the special requirements of the town,” statements of goals, objectives or policies, transportation facilities, agricultural practices, housing resources, existing land uses, educational and cultural facilities, parklands, economic strategies and anything else consistent with the orderly growth and development of the local government.<sup>53</sup> The plan is adopted by the local legislative body, but may be prepared by the legislative body or, at the direction of the legislative body, by a planning board or special board. If prepared by a planning board or special board, the board shall, by resolution, refer the proposed plan to the local legislative body.<sup>54</sup>

Local governments considering adopting a comprehensive plan must consider SEQRA procedures as early in their deliberations as possible.<sup>55</sup> Adoption of a comprehensive plan is a “Type 1 action” for purposes of SEQRA review, meaning that it is an action “more likely to require the preparation of an EIS.”<sup>56</sup> The local legislative body, as the agency responsible for adopting the plan, would be the “lead agency” and would be responsible for assuring that SEQRA requirements are met.<sup>57</sup>

#### ***Benefits of a comprehensive plan***

- P Provides a process for identifying community resources, long range community needs, and commonly held goals**
- P Provides a process for developing community consensus**
- P Provides a blueprint for future governmental actions**

The board preparing the comprehensive plan must hold one or more public hearings and other meetings, as it deems necessary, to assure full opportunity for citizen participation in the preparation of the proposed plan.<sup>58</sup> Additionally, the legislative body must hold a public hearing on the proposed plan prior to adoption.<sup>59</sup>

The proposed comprehensive plan must be submitted to the appropriate county or regional planning agency for review pursuant to General Municipal Law, §239-m.<sup>60</sup> Comprehensive plans must be periodically reviewed by the local government which has adopted it.<sup>61</sup> Adopted plans and

amendments are filed with the municipal clerk and with the county planning agency.<sup>62</sup>

Once adopted, all land use regulations must be consistent with the comprehensive plan. This will require the local government to consider whether its existing land use laws must be amended before, or at the same time as, adoption of the comprehensive plan. In the future, the plan must be consulted prior to adoption or amendment of any land use regulation. Plans for capital projects of *another governmental agency* on lands included in the adopted comprehensive plan, must take the plan into consideration.<sup>63</sup>

## Conclusion

New York requires that zoning be adopted in accordance with a well-considered or comprehensive plan. This requirement reflects both underlying constitutional considerations and a public policy which views zoning as a tool to plan for the future of communities. Over the years the New York courts have defined the comprehensive plan to be the legislative body's process of careful consideration and forethought which results in zoning calculated to serve the general welfare of the community.

Recently the zoning enabling statutes have been amended to provide a process for adoption of a comprehensive plan, a formal planning document, which can provide goals and objectives for that community. Once adopted, land use regulations must be consistent with it. For those communities which choose not to adopt a formal comprehensive plan pursuant to these statutes, the requirement that zoning be "in accordance" with a comprehensive plan still applies, but the long-standing court-fashioned definition of comprehensive planning, continues.

## ENDNOTES

1. *Zoning: The Laws, Administration, and Court Decisions During the First Twenty Years*, Bassett, Edward M. (1940), p.23.
2. *Id.* at 22-23.
3. Town Law, §263, Village Law, §7-704, General City Law, §20(25).
4. *Zoning and Land Use Controls*, Rohan, Patrick J. (1998), §16.02[2].
5. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).
6. *Id.*, at 394.
7. See *Golden v. Planning Board of the Town of Ramapo*, 30 N.Y.2d 359, 370 Footnote 4 (1972); *appeal dismissed* 409 U.S. 1003.
8. *Fred F. French Investing Co., Inc. V. City of New York*, 39 N.Y.2d 587, 596 (1976); *appeal dismissed*, 429 U.S. 990.
9. Bassett, at 28.
10. General City Law, §20(25).
11. Town Law, §263 and Village Law, §7-704.
12. General City Law, §28-a; Village Law, §7-722; Town Law, §272-a; More about these below.
13. *Webster s New International Dictionary, second edition* (1958).
14. 11 N.Y.2d 428 (1962).
15. 21 N.Y.2d 463, 470 (1968).
16. *Daniels v. Van Voris*, 241 A.D.2d 796, 798 (1997).
17. Environmental Conservation Law, §8-0109 and 6 NYCRR §617.9(b). See, eg. *Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668 (1996). Similarly, earlier zoning cases held that the deliberate and careful consideration should include a review of reasonable alternatives. (*Udell v. Haas, supra*; *Northeastern Environmental Developers v. Town of Colonie*, 72 A.D.2d 881 (1979); *appeal dismissed*, 49 N.Y.2d 800.
18. See *SEQRA and the Zoning Law s Requirement of a Comprehensive Plan*, Damsky, Sheldon W., 46 ALBANY LAW REVIEW 1292, 1297 (1982).
19. 6 NYCRR §617.2(b)(3).

20. 6 NYCRR §617.7(c).

21. 6 NYCRR §617.7(a)(1).

22. 6 NYCRR §617.9(b)(1).

23. This is commonly referred to as the “hard look test.” *H.O.M.E.S. v. New York State Urban Development Corp.*; 69 A.D.2d 222 (1979); *Matter of Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400 (1986); *Akpan v. Koch*, 75 N.Y.2d 561 (1990); *motion to amend denied*, 76 N.Y.2d 846; *Kahn v. Pasnik*, 90 N.Y.2d 569 (1997).

24. See *Gernatt Asphalt Products, Inc., supra* and *Neville v. Koch, supra*; *Skenesborough Stone, Inc., v. Village of Whitehall*, 679 N.Y.S.2d 727 (1998); *Akpan v. Koch, supra*.

25. *Gernatt Asphalt Products, Inc. v. Town of Sardinia, supra* at 685 (1996) citing *Udell v. Haas*, 21 N.Y.2d 463, 472 (1968).

26. *Cannon v. Murphy*, 196 A.D.2d 498, at 500 (1993), *leave for appeal dismissed*, 79 N.Y.2d 757; citing *Collard v. Incorporated Village of Flower Hill*, 52 N.Y.2d 594, 600 (1981).

27. *Rogers v. Village of Tarrytown*, 302 N.Y. 115 (1951).

28. *Id.*, at 124.

29. 246 A.D.2d 217, 221-222 (1998).

30. Similarly, floating zones, which are zoning districts created within a zoning law for “landing” on the zoning map at some future date, have been upheld in light of spot zoning challenges. *Beyer v. Burns*, 150 Misc.2d 10 (1991).

31. *Cannon v. Murphy, supra*; *Schoonmaker Homes - John Steinberg, Inc. v. Village of Maybrook*, 178 A.D.2d 722 (1991), *leave to appeal denied*, 79 N.Y.2d 757; *Lazore v. Board of Trustees of Village of Messena*, 191 A.D.2d 764 (1993); *Daniels v. VanVorhis, supra*; *Rye Citizens Committee v. Board of Trustees for The Village of Port Chester*, 671 N.Y.S.2d 528 (1998).

32. 38 N.Y.2d 102 (1975).

33. 38 N.Y.2d 102, 110-111 (1975).

34. In *Gernatt Asphalt, supra*, the Court of Appeals specifically declined to expand the *Berenson* test for exclusionary zoning to encompass industrial uses.

35. *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121, 133 (1988).

36. *Neville v. Koch*, 173 A.D.2d 323 (1991) *affirmed* 79 N.Y.2d 416.

37. In *Gernatt Asphalt Products, Inc. supra*, at 685 the Court of Appeals found that “[t]he amendments at issue in this case are, by their very nature, in accord with the comprehensive plan



manifested in the Zoning Ordinance of the Town of Sardinia originally enacted.”

38. 72 N.Y.2d 121, 131.

39. *Damsky, supra*; *Schoonmaker Homes - John Steinberg, Inc. v. Village of Maybrook, supra*; *Rye Citizens Committee v. Board of Trustees for Village of Port Chester, supra*.

40. This was the case in *Town of Bedford v. Village of Mount Kisco*, 33 N.Y.2d 178 (1973). In *Gernatt Asphalt Products, Inc.* the Court of Appeals upheld the town’s zoning amendment after being able to say that “the record reveals that...” and “the record further reveals that... ” Conversely, in *Eggert v. Town Board of the Town of Westfield*, 217 A.D.2d 975, 181(1995) the relevant zoning amendment was struck down for failure to comply with the comprehensive plan requirement with the explanation that, “... [t]he record does not contain any detailed explanation by the Town Board... .”

41. *Lazore v. Board of Trustees for Village of Massena, supra*.

42. *Cohen v. Vecchio*, 197 A.D.2d 499 (1993); *leave to appeal denied*, 83 N.Y.2d 751.

43. *Tilles Investment Co. v. Town of Huntington*, 74 N.Y.2d 885 (1989). This case also implies that subsequent amendments to a zoning ordinance need not indicate an intent to abandon a previously adopted plan. The rule in this case would not apply, however, to a comprehensive plan adopted pursuant to Town Law, §272-a, Village Law, §7-722 or General City Law, §28-a as adopted by Chapter 209 of the Laws of 1993 (see discussion, *infra*.).

44. 33 N.Y.2d 178, 188 (1973).

45. *Damsky*, at 1295.

46. *Eggert*, at 181.

47. *Asian Americans*, at 131.

48. *Neville v. Koch, supra* at 324.

49. Town Law, §272-a; Village Law, §7-722; and General City Law, §28-a.

50. Town Law, §272-a(2)(a); similar definitions exist for villages (Village Law, §7-722(2)(a)) and cities (General City Law, §28-a(3)(a)).

51. Town Law, §272-a(11); Village Law, §7-722(11); General City Law, §28-a(12).

52. The new statutes specify that “[n]othing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans.” Town Law, §272-a(1)(h); Village Law, §7-722(1)(h); General City Law, §28-a(2)(h).

53. Town Law, §272-a(3); Village Law, §7-722(3); General City Law, §28-a(4).

54. Town Law, §272-a(4); Village Law, §7-722(4); General City Law, §28-a(5).

55. Town Law §272-a(8); Village Law §7-722(8); General City Law §28-a(9). See *King v. Saratoga Board of Supervisors*, 89 N.Y.2d 341 (1996).

56. 6 NYCRR §617.4(a); 6 NYCRR §617.4(b)(1).

57. 6 NYCRR §617.2(u); 6 NYCRR §617.6(b); 6 NYCRR §617.7(a); 6 NYCRR §617.9(a); 6 NYCRR §617.11. See *Matter of Coca-Cola Bottling Co. v. Board of Estimate*, 72 N.Y.2d 674 (1988).

58. Town Law, §272-a(6); Village Law, §7-722(6); General City Law, §28-a(7).

59. *Id.*, Note that a lead agency may hold a public hearing under SEQRA, after acceptance of a draft EIS. 6 NYCRR §617.9(a)(4). This hearing may be held concurrently with hearings under the zoning enabling laws so long as both statutory time periods for notice of the hearings are met. See 6 NYCRR §617.9(a)(4). As to the SEQRA hearing, note the post-hearing comment period. 6 NYCRR §617.9(a)(4)(iii).

60. Town Law §272-a(5)(b); Village Law §7-722(5)(b); General City Law, §28-a(6)(b).

61. Town Law §272-a(10); Village Law §7-722(10); General City Law §28-a(11).

62. Town Law §272-a(12); Village Law §7-722(12); General City Law §28-a(13).

63. Town Law, §272-a(11)(b); Village Law, §7-722(11)(b); General City Law, §28-a (12)(b).

# VILLAGE OF COBLESKILL COMPREHENSIVE PLAN



**Community Goals, Policies and  
Strategies**

# Acknowledgments

This plan was developed with the assistance and input of the following:

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William Gilmore, Trustee  
Bruce Russell, Trustee  
Floyd Holmes, Trustee

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# INTRODUCTION

This comprehensive set of land use and development goals, policies, and strategies addresses a series of important and on-going issues of land use and development in the Village of Cobleskill. Issues of special concern to the community include increased commercial growth along the Route 7 corridor, aesthetic impacts of development, village character, and pedestrian and traffic issues.

## Planning Efforts

This plan is the result of over a year of planning activities coordinated by the Village Board and the Cobleskill Steering Committee. Its development is coordinated with, and has been built upon, past planning efforts. Those efforts include: 1) Town and Village of Cobleskill, New York - Master Plan, 1964; 2) Business Area Plan, Village of Cobleskill, 1972; 3) Housing Market Analysis, Village of Cobleskill, 1973; 4) Alternatives for Future Growth, Town and Village of Cobleskill, 1974; 5) Cobleskill Development Study, 1975; 6) Village of Cobleskill Planning and Development Strategy, 1983; 7) 1986 Cobleskill Master Plan; 8) Downtown Audit - Hyatt-Palma, 1996 and 8) the Main Street Study, 1998. Plans and studies since 1983 should be referred to provide background and planning history in the Village.

For both past and current planning activities, considerable public input occurred. This input is the basis of this Comprehensive Plan. During development of the 1986 plan, six public participation workshops and one formal public hearing were conducted. Additionally, Village officials and community members were individually interviewed for their views on the various issues under consideration. The Downtown Audit, conducted in 1996 by Hyatt-Palma consultants, provided another recent public participation opportunity.

In the summer of 1998, the Village initiated a planning study and public outreach process specific to Route 7/Main Street issues. A visual preference slide survey was done to gain input on how the residents and landowners in the Village of Cobleskill feel about various aesthetic concerns. Since village character is a major concern to people, the Visual Preference Survey was used to help determine what kind of "look" is preferred. The survey documented people's preferences for a variety of scenes typical to the village such as buildings, landscapes, streetscapes, signs, and parking lots. Additionally, it analyzed the strengths, weaknesses, opportunities and threats as perceived by participants. This process expanded and updated community goals and

values.

The planning study resulted in the development of a set of recommendations to meet the goals of the community. The Village Board appointed a volunteer, ad hoc steering committee made up of representatives of a variety of village interests. Their goal was to review and begin implementing recommendations made in this study. This set of comprehensive goals and strategies is a result of that group's work.

These goals and strategies will serve as a reference point from which public policy makers, private investors, and community residents can view and evaluate the specific elements of proposed development activities in the Village of Cobleskill. The Comprehensive Plan will serve as the basis for revisions to the Village Zoning Law, and it should guide the Zoning Board of Appeals in the consideration of administrative reviews and variance requests, guide the Village Planning Board in its review of development proposals and site plans, and assist the Board of Trustees in its overall decision making. This document is also designed to aid private investors and developers in understanding the long-term needs and objectives of the Village so that new proposals can be appropriately designed. The plan outlines a variety of desired performance standards to be addressed in future zoning amendments.

## Preamble

**I**t is desired that the Village of Cobleskill remain a quality place to live and conduct business. Policies of the Village should reflect the desires of the community to protect and restore historic properties and character, to enhance the small village and pedestrian atmosphere, to maintain the uniqueness that is the Village, to enhance economic development opportunities that contribute to and support these characteristics, and to ensure that the traditional central business core of the village is dynamic. In order to accomplish these goals, the Village shall use appropriate techniques and programs outlined in this plan. Among specific programs called for in this plan, certain "neo-traditional planning techniques," such as performance-based zoning, allowing mixed-use development, traffic calming and control of traffic access, and building on traditional patterns of development, are considered to be important tools to accomplish the stated goals.



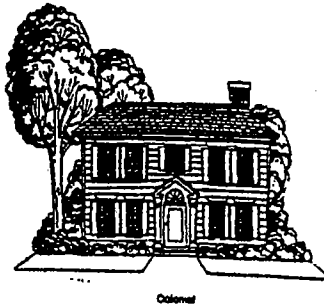
Contained in the "Cobleskill Planning and Development Strategy" (1983) is a statement of goals and objectives for the Village of Cobleskill which is as appropriate today as it was then. These goals shall form the overall direction upon which planning and development in the Village of Cobleskill should proceed. They are:

- To provide adequate public facilities and improved services, both public and private; to allow for reasonable growth on adequate and properly served sites; to maintain a favorable balance between municipal costs and revenues and other benefits associated with new development;
- To enhance the appearance and small-town character of the Village; to conserve the natural amenities of the Village; and to promote the protection of buildings with historic and/or aesthetic value while enhancing the National Register District status of the central area of the Village;
- To promote and maintain the integrity of existing residential neighborhoods; to conserve the existing housing stock and to create increased and affordable housing for people of all income groups;
- To promote the retention and creation of local employment opportunities;
- To strengthen the position of Cobleskill as a regional shopping center; and
- To encourage the reinforcement, rehabilitation and development of the Central Business District, the Industrial Corridor along the railroad, and the East End or "Village Gateway" commercial center.

## GENERAL POLICY

The general tenor of public input throughout the current and past planning efforts has reflected the on-going tension between the desire for economic growth, and preservation of the small town atmosphere of Cobleskill. Most participants involved in the planning process through the years have characterized growth as desirable and inevitable. Most participants have also characterized the preservation and enhancement of the Village ambience as essential and primary.

Throughout the various studies, a clear sense of priority has emerged in the public participation process. That is the importance of the



preservation of the small town atmosphere. The consensus expressed is that the ambience of Cobleskill, with its turn-of-the-century village feeling, is too important to be lost. Growth is both acceptable and desirable as a source of jobs and community income, but not at the sacrifice of the older elements which together make up the sense of community identity.

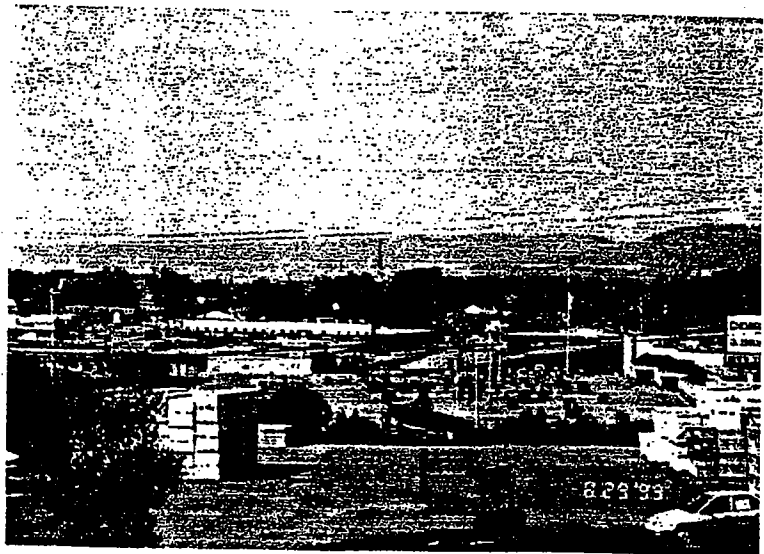
## Goals, Policies and Strategies

### Commercial Development

Concentration, rather than spreading out of commercial development along Route 7 is a primary goal. Sprawl development tends to discourage infill or redevelopment investment in the existing commercial areas and will have a major negative impact on the visual ambience and the pedestrian atmosphere of the Village, ultimately decreasing the value of both residential and commercial property. Strip development over the years along Route 7 has increased traffic congestion. Current zoning and land use practices in the Village of Cobleskill will perpetuate this style of development.

**The Village policy is to discourage commercial development outside existing commercial areas.**

New, large-scale commercial uses should be directed to existing commercial zones to prevent sprawl, at least until those areas are completely utilized. Adaptive reuse of existing buildings along Main Street should be encouraged for service and small retail uses. Once the East End, the Central Business District, and the Railroad Corridor are fully developed, the Village should consider opening other areas up for commercial development.



*View of the Village showing visual character not preferred.*

**The Village policy is to permit conversion of single-family dwellings to multi-family only when they meet strict performance standards that ensure quality housing.**

**The main goal of Village planning should be to encourage development that contributes to Cobleskill as a unique place by reflecting its village character and adding to it in appropriate ways.**

## Performance Standards

Performance standards are specific requirements that a land use activity must conform to in order to meet the goals and expectations of a community in relation to protection of the health, safety, welfare, and quality of life. Several performance standards should be implemented in the Village of Cobleskill for commercial uses including, but not limited to those for parking, traffic patterns and access, screening, noise, lighting, signage, hours of operation and building architecture.

## Housing Development

Conversion of existing dwellings from single-family to multi-family should be limited. Small and narrow lots, narrow streets, and high population density with resulting parking and traffic problems have created overwhelming sentiment on the part of property owners that further apartment conversions are undesirable.

Single family to multi-family conversions should be subject to strict site plan review, performance standards, and enforcement. The Village should provide opportunities for private investment in providing additional desired housing. In addition, portions of the undeveloped area within the Village should be made available for development of new rental apartments to meet rental demand.

## Village Character

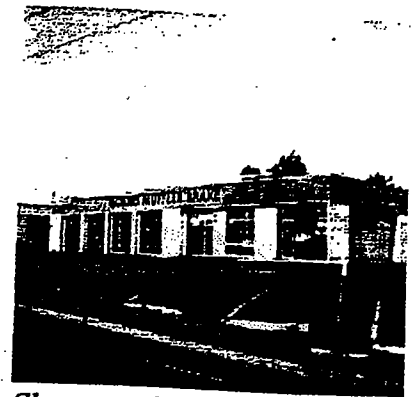
During the summer of 1998, the Village sponsored a Visual Preference Survey to gather public opinions on various design and aesthetic characteristics. The results of this study offer insight into the preferences of the community for its future.

People in Cobleskill, from an aesthetic point of view, rejected patterns and spatial characteristics typical of "sprawl" or highway commercial strip growth in favor of more traditional images. These results do not show that Village participants rejected new development. Rather, they rejected images that portray new development built in a very particular way. Preferred development patterns were such that they a) have a 19<sup>th</sup> century traditional relationship of the building to the street, b) are on streets that allow on-street parking, sidewalks and shade trees, c) have buildings that use traditional 19<sup>th</sup> century looking signage, d) have green space and landscaping, e) have a variety of buildings and uses, f) have buildings that have peaked roofs, inviting entrances and human scale design (rather than designed for the automobile), g) have areas

The Village should adopt design guidelines for all commercial development to maintain the Village's unique character and quality of place.



*Character of Commercial Building Not Preferred*



*Character of Commercial Building Not Preferred*



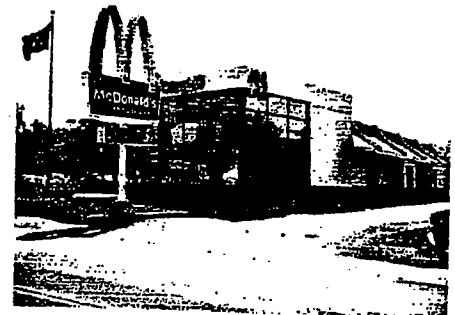
*Character of Commercial Building Preferred*



*Character of Commercial Building Preferred*



*Character of Commercial Building Preferred*



*Character of Commercial Building not Preferred*

where street

frontages and parking lots are landscaped, and h) have all parking to the rear or side of the building. Flat-topped buildings were considered appropriate mainly in the traditional Central Business District.

Building designs that are not preferred in Cobleskill are flat-topped and box-shaped buildings with windowless walls, surrounded by asphalt. Auto-oriented layouts, with parking lots located directly in front of the front doors and without pedestrian amenities, were also rejected.

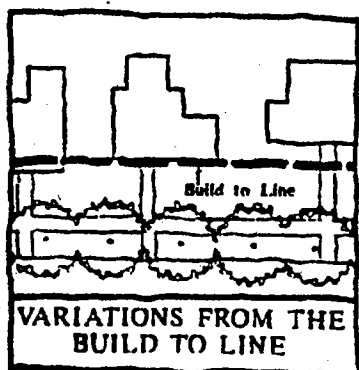
General design and layout principles recommended for incorporating in Village land use laws are:



*Example of Traditional Building  
in Central Business District*



*Example of Traditional  
Residential Building*



**The Village policy is that historic architecture is a major ingredient in the ambience that gives the Cobleskill community its sense of identity and that must be preserved.**

• Buildings and building layouts should be designed with the emphasis on people, rather than automobiles. Designs should create a sense of neighborhood and community. Design should reflect pedestrian dimensions through compact form, layout and streetscape characteristics. Streetscapes create the form and scale of the community and must accommodate both the pedestrian and the vehicle. Pedestrian accessibility to services and retail opportunities are vital and should be an important component of all development within the Village.

• Buildings and building layouts should be designed in harmony with nature and the existing community. They should capitalize on unique features in Cobleskill such as diversity of architecture, turn-of-the-century design, green areas, and shade trees.

• Landscaping, street trees, and natural vegetation are important to maintain and enhance village character. Land use regulations should ensure that there is adequate internal and peripheral open, green or landscaped space.

• Regulations should allow reasonable variation of lot sizes in width, depth and setbacks to create new development patterns that are in keeping with the desired, traditional layout of the village. Setbacks should be compatible with the neighborhood.

• Regulations should allow mixed land uses along Main Street to create a balanced community, improve building utilization, reduce traffic congestion and municipal service costs, and expand the tax base.

• The physical nature of the village should be unified by encouraging common design features, including building mass and style, facade treatment, materials, colors, landscape and streetscape details.

## Historic Buildings

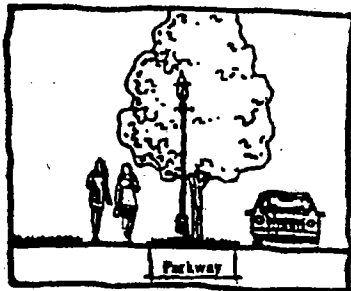
The historic architecture of the Village in general, and of the Historic District in particular, must be protected from demolition or major alteration. Residents feel that the historic character of the Village creates the sense of identity. Threats to that sense of identity create fears among many about the impact of economic growth on the Village.

Village land use and development policy should include adequate protection for historic architecture. The current Historic District regulations need clarification, more detailed review standards, better administrative procedures, and closing of some legal and procedural



*Example of Traditional Residential Building Adapted for Commercial Use.*

**The Village Policy is that street trees and landscaping requirements should be incorporated into all Village land use policies and laws.**



loopholes. Additionally, the Historic District regulations should be changed to reflect the model New York State Historic District law to rectify such problems as the administration of certificates of appropriateness for demolition, hardship application procedures, and alternative use plans. The Village needs to address mechanisms to ensure long term maintenance of historic properties and to prevent landowners from using poor maintenance as a reason for demolition.

## Trees and Landscaping

Landscaping and tree-lined streets are highly valued in Cobleskill and should be encouraged wherever feasible. A strong preference for tree-lined streets emerged from the Visual Preference Survey. Lack of landscaping in Cobleskill, especially in the East Main Street Commercial Area which is devoid of street trees, is a major issue. Trees that line other streets, such as South Grand Street, add to the aesthetics of the neighborhood and are a critical component to be protected.

Landscaping requirements in the zoning law should reflect the following principles:

- Landscaping standards should be established, and should be an integral part of every project. Landscape standards shall take into consideration the placement of utilities, the requirements of utility companies and the NYSDOT, and characteristics of desired tree species. Additionally, landscaping should buffer the site from and integrate the site with the surrounding area.
- Building placement and lot layouts should be designed to relate to and incorporate existing vegetation.
- Landscape treatments should combine with appropriate walks and street surfaces to provide an attractive development pattern.
- When new development occurs, trees should be required to be planted in the "parkway" between the street curb and the sidewalk along all Village streets to reinforce Village character, provide a buffer between vehicular traffic and pedestrians, and provide traffic calming.
- The Village should institute a street tree planting program to include an inventory of existing trees and conditions, identification of locations needing new trees, an outline of budget and staffing needs, and a plan for long-term tree maintenance and replacement.
- The Village should continue to work with the New York State

**The Village policy is that planning should be a continuing process. This Plan and the zoning district regulations and related local laws should be reviewed and amended as needed every five years.**

**The Village policy is that zoning shall be revised to improve its ability to meet the goals of this comprehensive plan.**

Department of Transportation to implement fully a street tree and landscape plan along state roads in the Village and to provide for property-friendly snow removal.

## Planning, Administration and Enforcement

### Planning

The actual amount of growth in housing, jobs and commercial activity, the extent of continued market demand for further growth in each use, and the extent to which land designated for various uses is utilized will be continually in flux. The Village Planning Board should conduct a review of the Comprehensive Plan for the Trustees at least every five years, in light of emerging and changing uses and demands, to incorporate any needed adjustments in designated zoning districts or regulations. The Village Board of Trustees and Planning Board should realize that these adjustments in land-use policy are necessary and should be attentive to the need for them. This will prevent land use policy making in a crisis context in the future; and will provide sufficient flexibility in policy, based on considered rather than ad hoc judgments.

Such considered flexibility in legislative policy, combined with firm enforcement of that policy by the Zoning Enforcement Officer, Zoning Board of Appeals, Planning Board, and the Village Attorney should lead to a predictable policy atmosphere. As such, all public and private participants in the development and land use process will know what can and cannot be done, and should ensure that policy goals reflected in the Comprehensive Plan and land use laws are implemented in the real world.

### Zoning Regulations

The 1998 Main Street Study detailed numerous ways in which the zoning regulations lack clear language and ties to the comprehensive plan. In particular, the regulations fail to adequately address aesthetic character. The zoning law be amended with the Cobleskill Ad Hoc Steering Committee input and as recommended in the Main Street Study to rectify limitations. The areas needing specific and immediate attention include use regulations, area and bulk regulations, signs, parking, design guidelines, Historic District regulations, and sidewalks.

To ensure that new development meets the goals of this plan, it is recommended that as part of the zoning application, applicants shall be

**The Village's goal is to implement performance zoning, where development is controlled through specific criteria or standards so that it will perform to the Village's expectations.**

**It is the policy of the Village to foster mixed uses along the total length of Main Street, in all zoning districts.**



*Example of Residential Building Adapted for Commercial Use in a Mixed Use Setting*

required to submit a statement in writing at the Sketch Plan Conference that describes how their proposal is consistent with this comprehensive plan and presented.

The Planning Board shall review all projects to ensure consistency with the Comprehensive Plan and in addition include, in its application process, steps to review consistency of projects. The zoning law should be amended to reflect this requirement of consistency and clarify that the burden of proof falls on the applicant rather than on the Village Planning Board.

#### Use Regulations

Current zoning in Cobleskill has rigid and mostly inflexible limitations on uses. It is designed to regulate uses, rather than the impact of uses on the neighborhood and Village. Because Village residents are so concerned about quality of life issues, community character, and Village atmosphere, regulations should be more consistent with performance zoning which allows more flexibility in uses; thus, a rigid use schedule will become less important. The Village of Cobleskill should concentrate zoning efforts along these lines to ensure that community goals and standards are met.

#### Mixed Uses

Current land use regulations in the Village require a strict separation of uses, except in the Central Business District. Zoning districts throughout the village, and especially along Main Street, are designed to be either residential or commercial. This is in contrast to Village development that evolved in the pre-automobile era. Mixed uses are where different uses are allowed to be mixed together in either the same building (commercial below and residential above) or in adjacent buildings. Mixed-uses still make economic and social sense. They promote community activities, help conserve resources, make shopping a more personal experience, and build community identity by offering a fuller sense of place.

Businesses can also benefit from shared driveway access and parking, from the collective attractiveness of many nearby products and services, and from the surrounding strong residential base of support. In contrast, when commercial and residential development are isolated, and especially when commercial development is allowed to move away from core Village areas, the local budget can be strained to provide expanded services such as roads, utilities, enforcement, and snow removal for outlying areas.



Mixed uses along Main Street will allow adaptive reuse of existing structures and increased economic development opportunities for both property owners and the Village. Mixed uses should be allowed within all districts along Main Street and if this is beneficial to the Village, expansion of this option should be considered for other locations in the future. A list of land uses that would not be compatible should be developed as well. To ensure that commercial and residential uses are compatible, the Village should adopt clear performance standards for design, maintenance, traffic and parking, signage, lighting and landscaping, and land use. Village zoning should be amended to allow funeral homes as a permitted use in residential areas subject to strong performance standards to ensure compatibility with nearby residences.

#### Area and Bulk Regulations

Maintenance of the traditional village character has been a primary goal of planning in the Village of Cobleskill for many years. The 1998 Main Street Study outlined how current zoning regulations result in suburban, sprawl style development. Current required lot sizes and setbacks do not honor traditional patterns and do not offer mechanisms for site-specific layouts to enhance design and assure uniformity from one location to the next. Zoning should be amended to allow preferred traditional patterns.

#### Parking

Parking standards in the current law have the potential to allow creation of large parking lots. Lack of guidance on parking lot design, including location, screening, and lighting, could result in negative impacts to village character. Parking standards should be addressed to control flow of traffic, aesthetic character, landscaping, and safety of vehicles and pedestrians.

Parking areas in the Central Business District, including public, semi-public, and private lots should be evaluated for adequacy and additional parking developed, if needed. All options should be investigated as to feasibility, cost, and number and distribution of resulting parking capacity. Long-term maintenance should be considered as well. All alternatives to increasing parking should be explored including layout improvements, acquisition of new parking lots, and use of on-street parking.

Over the past several years, several streets in the Village have had on-street parking removed. As a consequence, traffic speed has increased, and pedestrian safety has been decreased. The Village should investigate and take steps to bring back on-street parking on West

**Village policy is not to allow overbuilt parking lots because they detract from village character and not desired from an aesthetic point of view.**

**It is recommended that the Village evaluate parking needs and explore all alternatives to increase parking.**

**On-street parking should be maintained and re-instated where possible, as a traffic calming technique.**

**The Village should amend its laws to ensure better sign design in all commercial areas.**

Main Street and Elm Street, in particular, and other locations that may be appropriate. The Village should work with the New York State Department of Transportation in this effort.

### Signs

Current regulations often result in signs that are too large and too tall, and often ones that are aesthetically inappropriate. The zoning law should provide sign standards on a district by district basis to ensure that the stated goals of each district are maintained and so that standards reflect the goals of this plan. A thorough review process will contribute toward better sign design that is in keeping with Village design goals. The Village should ensure that sign regulations are especially consistent with goals that encourage adaptive re-use and mixed uses along Main Street.

### Land Use Areas

Many of the recommendations included in the 1986 Master Plan have been incorporated into zoning. Few changes to the boundaries of land use areas are recommended in this plan. However, the following description does outline some changes and needs related to land use areas.

### Commercial Land Use

Several commercial areas are designated to accommodate such activity. The existing commercial areas are: The Central Business District ; Highway Business; and General Business.

Commercial areas should continue to be surrounded and defined by areas of residential use. This policy will serve to avoid scattered commercial activity and strip development, both of which will dilute the energy of concentrated commercial centers and have a detrimental effect on the small town ambience which is Cobleskill's major attraction, especially for residential growth.

### East End Commercial Area (Zoned Highway Business)

The East End commercial area has roles as a shopping center and as the entry point for all traffic from the east. As such, it is an area that gives the first visual impression of the Village to most visitors. Both roles should be considered in development of the East End. Traffic

**Over time, it is the objective of this plan to develop a more traditional village streetscape in the east end commercial area of the Village.**

control and access management should be applied in this location to minimize the impact of development on traffic. Building lot and design standards should be implemented to improve the appearance of this area and to ensure that traditional village character is developed.

The zoning law should be amended to apply similar design standards to the East End as those which currently exist for the General Business District, but adapted for the Highway Business District. This includes standards for parking, signage, sidewalks, landscaping and building design. However, lot size and other dimensional requirements must recognize the conditions of this zone.

#### West End Commercial Area (Zoned Highway Business)

This small highway commercial area has developed along Route 7 west across from the college. This area is surrounded and limited by college lands to the south and west and the railroad tracks to the north, leaving little or no room for further commercial development. Like the East End Commercial Area, pedestrian access to this area is difficult for lack of sidewalk connections from the MacArthur Avenue intersection westward. Sidewalks should be installed along the north side of the road, behind the guide rails in this area.

#### East Main Street Corridor (Zoned General Business)

This area is suitable for mixed commercial/residential use. The narrow street and Village character should be maintained at this location. New construction in this area should be consistent with traditional styles and should aesthetically fit into the neighborhood. Further development should encourage construction of a connector street through the area to help alleviate traffic difficulties on Route 7.

#### Central Business District

This plan recommends maintenance of this district. Standards contained within the zoning law for this district should ensure that the traditional elements of the Central Business District are maintained. The Village should ensure that existing facades be maintained or the architectural style replicated, while allowing flexibility of building behind the facade. The Village should work with the Cobleskill Partnership and existing businesses to continue efforts to revitalize this downtown area.

#### Residential Land Use Areas

Areas already developed for residential use should continue to be





limited to residential use. Opportunities for multiple housing of moderate density should be accommodated. Very low density residential development (1 dwelling unit /acre) or continued agriculture or forest use is appropriate where higher elevations make it difficult to supply municipal water. Low density, single-family only areas (1 dwelling unit/ 12,000 sf.) should be adjacent to existing developments in the northeastern sector of the Village where the area is wooded and relatively steep. Moderate density housing (1 dwelling unit/9000 sf.), preferably with mixed single family and duplex construction, should continue to be accommodated. Apartment development, or high-density residential development should be maintained in the Village. For these areas, it is important that site plans be reviewed by the Planning Board to ensure adequacy of parking, landscaping, and other utilities.

In the event that additional lands for residential development are needed, the Village can explore the feasibility of annexing certain areas. Areas for which residential annexation may be appropriate are on Mineral Springs Road across from the Industrial Park, North Grand Street along Route 145 to Lawyersville, Upper Quarry Street, Elm Street, Barnerville Road, Route 7 east, and southeast of the Village on the Boreali property.

#### Industrial Land Use

The recommended policy on industrial land use is to require all new industrial development to locate in the newly-established Schoharie County Industrial Park at the south edge of the Village. The exception to this rule should be for Planning Board and Board of Trustees approved proposals for light industrial use in the Redevelopment Zone. However, some light and cottage industries may be suitable for locations along Route 7. Adequate site plan review and special permit criteria should be in place to ensure that such development fits in and performs according to the standards and desires outlined in this Comprehensive Plan.

#### Redevelopment Zone

A number of areas in the Village should continue to be designated as Redevelopment Zones. Within those areas, any future use would require approval of both land use and development specifics by the Village Planning Board and Board of Trustees. No use would be permitted by right, as in other zones, but any permitted use could be allowed upon approval of the Planning Board and the Board of Trustees.

## Land Conservation and Parks

Several areas within the Village are still suitable for Land Conservation and park use areas. Such designation will protect these areas from development and will allow natural functioning of the floodway. Existing Village-owned parks (Village swimming pool complex and land), Center Park, Golding Park and Youth Center, Clinton Circle Park, and all land within the floodway of Mill Creek and the Cobleskill Creek, as defined by the Federal Emergency Management Agency, should continue to be in this land use area. It is recommended that the Legion-Campus Drive pond area, which is necessary as a flood damper in high-runoff periods, continue to be designated for land conservation and transferred to municipal control. This location may be excellent for development of a nature walk. A buffer zone approximately 250 feet wide, surrounding the stone quarry at the northeast corner of the Village, should be maintained as land conservation and planted to evergreen trees to buffer quarry activities from residential areas.

## Flood Hazard Area

It should be recognized that, in addition to land within the floodways designated for land conservation and park use, all of the 100-year flood plain of the Mill and Cobleskill Creeks should be designated as a Flood Hazard Area Overlay in which any structure to be built should be of flood resistant construction. Flood Hazard regulations must be in addition to the requirements of the underlying zoning district.

## Enforcement

Enforcement of existing and proposed local land use laws is an important consideration. There has been on-going concern about lax, inadequate, or inequitable enforcement. It should be a long-term goal to ensure adequate enforcement of all zoning and land use regulations. Because of the increased difficulty and time demands on the position of Zoning Enforcement Officer, the Village should maintain the Zoning Enforcement Officer as a full-time position and ensure that appropriate compensation be provided.

## Administration

Given the increased and increasing demands on the time of members of the Planning Board, Zoning Board of Appeals, and Village Board, the Village should consider a full-time or part-time Village Manager.

**The Village should ensure that a full-time enforcement position be continued.**

**The Village should consider having a professional manager.**

**The Village should develop a policy on annexation to guide future decision making.**

**The Village policy should be to communicate regularly with the Town and develop mutual goals and programs to meet those goals.**

The benefits to the Village would not be limited to land use planning, administration, and enforcement, but would extend to public utility management, budgetary planning, and overall Village administration. In either case, salary must be commensurate with a position which would provide continuity in planning, administration, and management that cannot be provided by part-time public servants in a growing community.

## **Annexation**

Annexation of new areas into the Village has a variety of benefits and detriments. Some of the concerns related to annexation include the possibility of increasing commercial sprawl, fostering more strip development along Route 7, lack of consistency between Town and Village zoning codes and requirements, and provision of water and sewer services outside the Village.

It is strongly recommended that the Village of Cobleskill immediately commission a study of annexation and develop a policy that will guide future annexation decisions especially relating to water, sewer, utility, other infrastructure, and other Village services. A cornerstone of that policy should be that all developments proposed for annexation must meet all Village standards and expectations. Further, no annexation should occur until such policy is developed and implemented.

## **Town and Village Interactions**

In order to avoid policy dissonance between the Town and Village, both jurisdictions would benefit from serious and far-reaching considerations of common land use policy. Land use policies established by and for the Village can be seriously weakened by policies pursued by the surrounding Towns. If, for instance, the Village pursues a policy of concentration of commercial development, as recommended elsewhere in this Plan, while the Town encourages commercial strip development along Route 7 to the east, Village and Town policy would work at cross purposes. It is also easy to conceive of development situations in which the Village and Town could find themselves in a competitive stance toward each other, and ultimately to the disadvantage of both.

The Village of Cobleskill should open up lines of communication with the Town of Cobleskill and other surrounding towns to develop and implement mutually beneficial land use planning goals. This relationship could range from regular discussions of policy, to requesting recommendations from the counterpart body, to the creation

**The Village should take an active role in its own economic development destiny.**

**The Village economic development policy should be to welcome new businesses and to support existing ones, but at the same time to expect quality growth based on performance standards and design criteria.**

**Increased traffic congestion is of concern to businesses and residents and should be a consideration in the planning process.**

of common planning mechanisms, or to the ultimate consolidation of the two jurisdictions into one. There are sufficient areas of common concern and decision making to justify consideration of any of these levels of common endeavor. At a minimum, a standard mechanism of communication between the two municipalities is needed when policy decisions are under consideration.

## **Economic Development**

Economic development should be an important activity in which the Village is involved. The area's economic policy has generally been one of "waiting" and reacting to whatever proposals may arise. This "reactive" strategy can result in economic growth that is not desired or appropriate to meet the stated goals of the Village.

The Village should adopt the following economic development strategies:

- A Government/Business/Citizen/College Economic Development Committee should be formed to identify and recruit specific, desired businesses. To further enhance Cobleskill's economic base and its role as a regional shopping center, the Village should take an active role in ensuring that desired, needed and quality businesses are targeted and recruited to the Village. This committee should especially explore, recruit and support home businesses, telecommuting, clean industries, and small businesses.
- This new committee should use the Village's historic character to develop an economic theme, especially in the Central Business District, because of the architecture of the area. A unified approach will increase economic activities, including tourism, and promote quality development.
- The Village should consider having professional assistance available to implement economic development programs.

## **Traffic Patterns and the Pedestrian Network**

### **Streets**

The Village of Cobleskill has developed primarily in an east-west linear pattern, a function of geography and transportation facilities. This has

**The Village must communicate regularly with New York State Department of Transportation and railways to convey Village policy and goals as it relates to highways and railways.**

**Traffic access management and traffic calming should be used as the preferred techniques of controlling traffic.**

**Streets should not be widened as a method for traffic congestion relief.**

created an overall Village traffic pattern that resembles a two-ended funnel. Traffic congestion has increased over the years and is of concern to both businesses and residents. Streets, traffic patterns, and the pedestrian network are critical aspects of the Village. Impacts to traffic flow, aesthetic character of streets, and pedestrian access and safety all should be given serious review and consideration during any development proposal.

Some specific strategies to control traffic and enhance transportation and pedestrian opportunities through the village are as follows:

- The Village of Cobleskill's policy should be to actively and regularly communicate with Region 9 of the New York State Department of Transportation and the railway operators to ensure that rail work and DOT road work is consistent with Village policies on street character, pedestrian facilities, and Village character. To facilitate this, the Village should forward copies of this plan and any zoning amendments and site plan requirements to appropriate staff at Region 9, NYS DOT, and to the railway operators. Other strategies include requesting road and bridge plans in the Village from NYS DOT and requesting public hearings be held on any proposed road, rail, bridge or other infrastructure work. The Village should participate in and be aware of DOT's road work so that plans can be made for landscaping and possible burying of overhead wires as a coordinated effort.

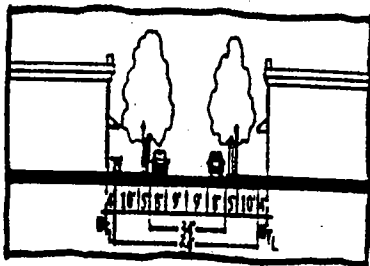
- The Village should work cooperatively with NYS DOT to implement both this plan and DOT's Comprehensive Long Range Plan as it relates to the Village of Cobleskill. A committee should be appointed to work closely with DOT on their small urban area program of which Cobleskill is a part of.

- Adopt traffic access management in all locations, but especially in the east end of the Village. The Village should work with NYSDOT to develop an Access Management Plan for Route 7 before any major road alterations are considered and instead of major road widening. Communicate these goals with NYSDOT and convey the desire that Main Street should not be widened as a solution to traffic increases. The Village should work to decrease Route 7 traffic problems by encouraging and developing, when possible, access between lots to minimize multiple curb cuts. Bike lanes on Route 7 should also be explored as they may provide an additional traffic calming effect.

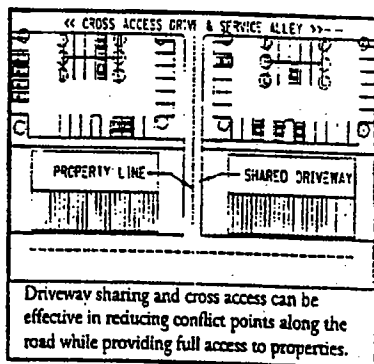
- It is recommended that the Village evaluate the current Official Map that identifies all current and future road corridors and right of ways. As part of this evaluation, origin and destination information would be helpful to collect. After streets are evaluated, the Official Map should



**Vital non-dedicated streets should be brought up to Village specifications and taken over as public streets**



*Diagram and dimensions for illustrative purposes only.*



be amended to reflect appropriate changes including considering deleting certain residential streets as connectors.

- Work with NYS DOT and the railroad to explore the feasibility and applicability of re-construction of the railroad overpass at Route 7.
- A transportation priority should be to work with DOT to develop a by-pass route for the Village.
- A number of streets currently in use have never been accepted as Village streets. Should they become totally unusable or be closed to public use, traffic patterns would be seriously disrupted. Therefore, every effort should be made to encourage current owners to discuss with the Village ways to bring them up to an acceptable standard. If no avenue to get improvements accomplished by current owners is available, the Village should consider doing so at public expense. This includes "Diner Drive".
- Several private streets are used regularly by the public but they are not crucial to Village traffic patterns and thus would not justify expenditure of public funds to bring them up to Village specifications for dedication. France Lane should be constructed or reconstructed to Village specifications if and when development is contemplated and preferably at the cost of the developer.
- The Village should amend where necessary, local land use regulations to allow for more sensitive design of Village streets that will maintain traditional streetscapes and character. A general narrowing of road widths and right of ways is needed to prevent over-built roads. Flexibility should be allowed to create appropriate village scale streets on a site by site basis.
- To facilitate safe pedestrian crossings along Route 7, the Village should work closely with NYSDOT to evaluate, and change if needed, signal timings at lights and to explore the feasibility of alternative options such as "bulb outs" and pedestrian refuge islands.

## Sidewalks

Sidewalks form the pedestrian network throughout the Village. Participants of the Visual Preference Slide Survey indicated that they prefer locations with sidewalks. Sidewalks also contribute to the character and safety of an area. A sidewalk program should be



*Example of Preferred Tree-lined Street With Trees in "Parkway".*

**It is recommended that the Village develop a coordinated program for proper installation and maintenance of sidewalks.**

developed to include the following strategies:

- An inventory of all sidewalks should be conducted to identify sidewalk conditions and identify locations lacking sidewalks. The Village should develop a capital improvement plan that outlines a priority schedule of sidewalk maintenance, repair, and building and budgetary needs. The plan should further outline an ongoing, multi-year program to implement the sidewalk projects.
- The Village should explore and implement options to better manage and enforce snow and ice removal requirements for sidewalks. Additionally, the Village should work with NYS DOT on sidewalk issues, especially relating to problems with snow plowing.
- The Village is encouraged to explore different mechanisms to implement sidewalk replacement. One recommended option is Village funding of the full cost of a sidewalk program with public funds and supplemental grant and aid monies, or both. Alternatively, to ensure quality standards and keep costs down, the Village could develop a list of pre-approved contractors to replace sidewalks to Village standards. Homeowners could contract directly with these contractors and then be reimbursed from the Village for related expenses. Finally, the Village could hire employees with the specific task of sidewalk replacement as part of their job descriptions.
- Zoning regulations should require sidewalks for all new construction in the future except in the areas designated for very low density residential land use, and the Planning Board should pursue a firm policy of pedestrian access in all construction requiring site plan or subdivision approval.

## CONCLUSION

The Village of Cobleskill has both a past and a future that must be considered in public planning policy. The 19th century homes and commercial architecture, and the 80-year-old maples along the streets create an ambience of graciousness that makes Cobleskill an attractive place to live, to work, to stroll, to play, to raise children. That ambience must be protected. The future of Cobleskill undoubtedly includes growth in population, in commercial activity, and in residential development, with the attendant problems and possibilities those present. Thoughtful planning, including the implementation of the strategies discussed in this plan, can do much to anticipate and avoid the possible clashes between the values of past and future that force land use policy decisions into a crisis context.

Coupled with well developed local land use regulations and enforcement it is desired that implementation of these strategies and policies will result in a predictable atmosphere for businesses and residents so that both future growth and maintenance of values and desired quality of life are accommodated.

